



CITY COUNCIL

Meeting Agenda

**REGULAR MEETING
COUNCIL CHAMBERS**

**MONDAY, JULY 11, 2011
7:00P.M.**

The Regular Meetings of City Council are filmed and can be viewed LIVE while meeting is taking place or at your convenience at any time after the meeting on the City's website at www.ReadingPa.gov, under Info and Downloads/Meetings and Agendas

1. OPENING MATTERS

A. CALL TO ORDER

B. INVOCATION: Pastor Quentin Wallace, St. Matthew United Methodist Church

C. PLEDGE OF ALLEGIANCE

D. ROLL CALL

2. PROCLAMATIONS AND PRESENTATIONS

- Recognition of Berks Best Seniors
 - Angelise Stuhl – Communications
 - Timothy Wood – Fine Arts and Science/Environment
 - Paula Beltran - Business

3. PUBLIC COMMENT – AGENDA MATTERS:

Citizens have the opportunity to address the Council, by registering with the City Clerk before the start of the meeting. All remarks must be directed to Council as a body and not to any individual Council member or public or elected official in attendance. Any person making personally offensive or impertinent remarks or any person becoming unruly while addressing Council may be called to order by the Presiding Officer and may be barred from speaking before Council, unless permission to continue speaking is granted by the majority vote of Council.

All comments by the public shall be made from the speaker's podium. Citizens attending the meeting may not cross into the area beyond the podium. Any materials to be distributed to Council must be given to the City Clerk before the meeting is called to order.

Those commenting on agenda business shall speak at the beginning of the meeting and shall limit their remarks to 5 minutes. Those commenting on general matters shall speak after the legislative business is concluded and shall limit their remarks to 3 minutes. No comments shall be made from any other location except the podium, and anyone making "out of order" comments may be subject to removal. There will be no demonstration at the conclusion of anyone's remarks. Citizens may not ask questions of Council members or other elected or public officials in attendance.

4. APPROVAL OF AGENDA

A. AGENDA: Council meeting of July 11, 2011

5. Consent Agenda Legislation

A. Resolution – authorizing the disposition of records of the Community Development Department as attached (**Community Development**)

B. Resolution – North 6th Street Paving Project (**Public Works**) *To be distributed Monday*

C. Resolution – authorizing the conditional offers of employment for up to 15 officers from the attached list of probationary officers (**Police**) *To be distributed Monday*

D. Resolution - authorizing the disposition of the following public records in Human Resources - City of Reading miscellaneous payroll printouts from 1996 thru and inclusive of 2006 (**Human Resources**)

6. ADMINISTRATIVE REPORT

7. REPORT FROM OFFICE OF THE AUDITOR

8. REPORT FROM DEPT. DIRECTORS, BOARDS, AUTHORITIES, & COMMISSIONS

9. ORDINANCES FOR FINAL PASSAGE

A. Bill No. 30-2011 - authorizing the Mayor to execute the lease between the City of Reading and the County of Berks for premises within parcel number 23531702762194 (approx. 6,000-10,000 +/-sq. ft.) situate in Lower Alsace Township, County of Berks, Pennsylvania for the development, erection and operation of a public safety radio system **(Law) Introduced at the June 27 regular meeting**

B. Bill No. 31-2011 - amending the Codified Ordinances of the City of Reading, Chapter 1 Administration and Government, Part 5 Boards, Departments, Commissions, Committees and Councils, Part C Human Relations Commission **(Law/Human Relations Commission) Introduced at the June 27 regular meeting**

C. Bill No. 32-2011 - amending the 2011 City of Reading Full Time Position Ordinance by creating one (1) Project Accountant/Financial Specialist, adding one (1) Wastewater Treatment Plant Utilities Engineer, creating two (2) Industrial Mechanics, creating two (2) Maintenance Worker III-Electrical/Mechanical Positions, and eliminating four (4) Maintenance Worker III positions **(Man Dir) Introduced at the June 27 regular meeting**

10. INTRODUCTION OF NEW ORDINANCES

A. Ordinance - authorizing the Mayor to execute the Agreement of Cooperation between the City of Reading and the Reading School District for the joint support of a Recreational and Educational Program and creation of the Reading Recreation Commission **(Law)**

B. Ordinance - amending the 2011 City of Reading Full Time Position Ordinance to reflect the changes made necessary by the current collective bargaining agreement for the Department of Fire and Rescue Services **(Fire/Council Staff)**

C. Ordinance - directing the Berks County Board of Elections to place a referendum question before City voters on the 2011 primary ballot which would amend the City of Reading Home Rule Charter by changing the qualifications of the City Auditor **(Council Staff)**

D. Ordinance - amending the 2011 City of Reading Full Time Position Ordinance by decreasing the number of Property Maintenance Supervisors and increasing the number of Property Maintenance Inspectors within the Community Development Department, Codes Division **(Codes/Council Staff)**

E. Ordinance - authorizing the Mayor to execute the agreement between the City of Reading and the Community Prevention Partnership for the coordination of the Weed and Seed Program **(Law/Mayor)**

F. Ordinance - authorizing the Mayor to execute a lease between the City of Reading and the Olivet Boys and Girls Club for a portion of the real estate situate in Pendor Park (**Law/Mayor**)

G. Ordinance – amending the Housing Permit Ordinance relating to capacity to rent (Law)

Pending Legislation

Ordinance – changing the topographical map of the City of Reading to reflect the street name change from Avenue A to Senator O’Pake Avenue (**Council Staff/Law**) *Introduced at the Feb 28 regular meeting; Town Meeting held April 7*

Bill No.19-2011 – amend 2011 Full Time Position Ordinance by adding a Planner II in the Community Development Department who will focus on the Ricktown Project (**Mayor**) *Introduced at the April 11 regular meeting; Tabled at the April 25 regular meeting*

11. RESOLUTIONS

A. Resolution 70-2011 – authorizing the Mayor to execute a FFY2011 (37th CD year - January 1, 2011 to December 31, 2011) Action Plan Amendment to move \$450,000 in CDBG unprogrammed funds to the 2011 Microenterprise Development Activity (**Community Development**) *Tabled at the May 9, May 23, June 13 and June 27 regular meetings*

B. Resolution 84-2011 - that the City of Reading consents to the sale of the Elm View Apartments Limited Partnership project property and the Mayor of the City of Reading is authorized to execute any and all documents required for the assignment of the above referenced loan and to modify certain Note and/or Loan Agreement terms, including but not limited to deferral of the July 2011 balloon payment, possible forgiveness of said balloon payment, and review of the July 2026 balloon payment for status determination (**Law/Community Development**) *Tabled at the May 23 June 13 and June 27 regular meetings*

C. Resolution - authorizing the Mayor to execute a FFY2011 (37th CD year - January 1, 2011 to December 31, 2011) Action Plan Amendment to add the Ricktown neighborhood component to the Neighborhood Housing Services of Greater Berks, Inc. Major System owner occupied residential rehabilitation activity. NHS will spend part (up to 50%) of the CDBG funding in the Ricktown neighborhood and make the program available to persons of any age in the Ricktown neighborhood (**Community Development**) *Tabled at the June 27 regular meeting*

D. Resolution - authorizing the public release of the results of the Sewer Investigation, authorized by Bill No. 3-2011 and amended by Bill No. 20-2011 as attached in the Findings of Facts and Conclusions (**Council Staff**)

E. Resolution – appointing Elsayed Elmarzouky to the Police Civil Service Board (**Admin Oversight**)

F. Resolution – appointing James Reber to the Citizen’s Advisory Board (**Admin Oversight**)

12. PUBLIC COMMENT – GENERAL MATTERS

13. COUNCIL BUSINESS / COMMENTS

14. COUNCIL MEETING SCHEDULE

Monday, July 11

Committee of the Whole – Council Office – 5 pm

Regular Meeting – Council Chambers – 7 pm

Tuesday, July 12

Conditional Use Hearing 1457 N 9th Street (addition of 3 rental units) –Council Chambers - 5pm

Monday, July 18

Public Works Committee – Council Office – 5 pm

Finance Committee – Council Office – 5 pm

Work Session – Penn Room – 7 pm

Monday, July 25

Committee of the Whole – Council Office – 5 pm

Regular Meeting – Council Chambers – 7 pm

15. BAC AND COMMUNITY GROUP MEETING SCHEDULE

Monday, July 11

Fire Civil Service Board – Penn Room – 4 pm

6th & Amity Neighborhood & Playground Assn – 6th & Amity fieldhouse – 6:30 pm

Tuesday, July 12

Airport Authority – Airport Authority Office – 8:15 am

Water Authority Workshop – Penn Room – 4 pm

District 11 Crime Watch – Orthodox Presbyterian Church – 7 pm

Wednesday, July 13

Zoning Hearing Board – Penn Room – 5:30 pm

Center City Community Organization – Holy Cross Church – 6 pm

Thursday, July 14

Police Pension Board – Penn Room – 10 am

Legislative Aide Committee – Penn Room – 7:30 pm

Friday, July 15

Fire Pension Board – Penn Room – 10 am

Monday, July 18

Library Board – 113 S 4th St – 4 pm

Tuesday, July 19

Charter Board – Penn Room – 7 pm

HARB – Planning Conference Room – 7 pm

Wednesday, July 20

Officers and Employees Pension Board – Penn Room – 1:30 pm

Diversity Board – Penn Room – 4:30 pm

Redevelopment Authority – Redevelopment Office – 5:30 pm

Thursday, July 21

Dare 2 Care – Bethel AME Church – 5:30 pm

Blighted Property Review Committee – Council Office – 6 pm

Southeast People's Voice – St. John's UCC – 6 pm

Mulberry & Green Citizens Committee – St. Luke's Lutheran Church

Monday, July 25

DID Authority – DID Office – 645 Penn St 5th floor – noon

BARTA – BARTA Office – 3 pm

District 7 Crime Watch – Holy Spirit Church – 7 pm

RESOLUTION NO. _____

Whereas, by virtue of Resolution 134-2009, adopted December 14, 2009, the City of Reading declared its intent to follow the procedures for the disposition of records set forth in the Retention and Disposition Schedule for Records of Pennsylvania Municipalities issued in 2009; and

Whereas, in accordance with Act 428 of 1968 (as amended) each individual act of disposition shall be approved by resolution of the governing body of the municipality; and

Whereas, the documents have been electronically scanned into the City's computer system.

NOW THEREFORE, the Council of the City of Reading hereby resolves as follows:

In accordance with the above cited schedule, Council hereby authorizes the disposition of the following paper copies of the public records for the Community Development Department:

1996 Action Plan
1997 Action Plan
1998 Action Plan
1999 Action Plan
2001 Action Plan
2003 Action Plan
2004 Action Plan
2005 Action Plan

10th year Program June 1984
10th year Program June 1984 Info Bulletin

1975 CDBG Application

1998 CAPERS
1999 CAPERS
2000 CAPERS
2001 CAPERS
2002 CAPERS
2003 CAPERS
2004 CAPERS
2005 CAPERS

1995-1999 Consolidated Plans
2000-2004 Consolidated Plans

July 1, 1975 – June 16, 1976 Grantee Performance Report

July 1, 1975 – February 29, 1980 Grantee Performance Report
July 1, 1975 – August 31, 1985 Grantee Performance Report
July 1, 1975 – August 31, 1986 Grantee Performance Report
July 1, 1975 – August 31, 1987 Grantee Performance Report
July 1, 1975 – August 31, 1988 Grantee Performance Report
July 1, 1975 – August 31, 1990 Grantee Performance Report
September 1, 1983 – August 31, 1985 Grantee Performance Report
September 1, 1987 – August 31, 1988 Grantee Performance Report
September 1, 1988 – August 31, 1989 Grantee Performance Report
September 1, 1990 – August 31, 1991 Grantee Performance Report
September 1, 1991 – August 31, 1992 Grantee Performance Report
September 1, 1992 – August 31, 1993 Grantee Performance Report
September 1, 1993 – August 31, 1994 Grantee Performance Report
1994-1995 Grantee Performance Report
September 1, 1994 – August 31, 1995 Grantee Performance Report
September 1, 1995 – August 31, 1996 Grantee Performance Report
September 1, 1996 – August 31, 1997 Grantee Performance Report
NHS HOME correspondence and reconciliations from 2001/2002

Adopted by Council on _____

President of Council

Attest:

City Clerk



AGENDA MEMO

POLICE DEPARTMENT

TO: City Council
FROM: Chief William M. Heim
PREPARED BY: Chief William M. Heim
MEETING DATE: July 11, 2011
AGENDA MEMO DATE: July 5, 2011
REQUESTED ACTION: Authorize the hiring of patrol officers

RECOMMENDATION

The Mayor and Police Chief recommend the hiring of fifteen officers from the attached list of individuals as probationary patrol officers:

BACKGROUND

The police department is authorized and budgeted for 174 police officers in year 2011. Currently, there are 158 officers on the force. There are an additional five officers retiring under the DROP pension program in the fall of this year. Therefore, the department wants to hire fifteen officers to begin the training and certification process. More than fifteen individuals are on the list due the possibility of some of the highest rated candidates not successfully completing the physical and psychological examinations required after an offer of conditional employment has been extended to them.

BUDGETARY IMPACT

None. The police department has current vacancies.

PREVIOUS ACTIONS

None

SUBSEQUENT ACTION

Council to take action to approve a resolution to authorize the hiring of up to fifteen replacement police officers as per the attached list.

RECOMMENDED BY

The Mayor and Police Chief recommend approval.

RECOMMENDED MOTION

Approve/deny the resolution authorizing the hiring of fifteen additional police officers. The effective date will July 25, 2011.

RESOLUTION NO. _____

Whereas, by virtue of Resolution 134-2009, adopted December 14, 2009, the City of Reading declared its intent to follow the procedures for the disposition of records set forth in the Retention and Disposition Schedule for Records of Pennsylvania Municipalities issued in 2009; and

Whereas, in accordance with Act 428 of 1968 (as amended) each individual act of disposition shall be approved by resolution of the governing body of the municipality:

NOW THEREFORE, The Council of the City of Reading hereby resolves as follows:

In accordance with the above cited schedule, Council hereby authorizes the disposition of the following public records:

Human Resources:

City of Reading miscellaneous payroll printouts from 1996 thru and inclusive of 2006

Adopted by Council on _____

President of Council

Attest:

City Clerk

BILL NO. _____-2011

A N O R D I N A N C E

AUTHORIZING THE MAYOR TO EXECUTE THE LEASE BETWEEN THE CITY OF READING AND THE COUNTY OF BERKS FOR PREMISES WITHIN PARCEL NUMBER 23531702762194 (APPROX. 6,000-10,000 +/-SQ. FT.) SITUATE IN LOWER ALSACE TOWNSHIP, COUNTY OF BERKS, PENNSYLVANIA FOR THE DEVELOPMENT, ERECTION AND OPERATION OF A PUBLIC SAFETY RADIO SYSTEM.

WHEREAS, the City of Reading is the legal owner of certain property known as 611 Skyline Drive, Lower Alsace Township, Berks County, Pennsylvania and Parcel Number 23531702762194 consisting of approximately 647.67 +/- acres; and

WHEREAS, the County of Berks desires to lease a portion of the aforementioned premises (approximately 6,000 – 10,000 +/- sq. ft.) for its development, erection and operation of its public safety radio system; and

WHEREAS, the City of Reading finds that leasing said premises to the County of Berks for said purpose is in the best interests of the City of Reading,

NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The Mayor is authorized to execute any and all documents to facilitate and effectuate the lease between the City of Reading and the County of Berks for a portion (6,000-10,000 +/- sq. ft.) of certain property known as 611 Skyline Drive, Lower Alsace Township, Berks County, Pennsylvania (Parcel Number 23531702762194) as set forth in the attachment.

SECTION 2. This Ordinance shall be effective ten (10) days after passage.

Enacted _____, 2011

President of Council

Attest:

City Clerk

Submitted to Mayor: _____

Date: _____

Received by the Mayor's Office: _____

Date: _____

Approved by Mayor: _____

Date: _____

Vetoed by Mayor: _____

Date: _____

LEASE AGREEMENT

(MT. PENN SITE)

THIS LEASE AGREEMENT (“**Agreement**”), dated as of the ____ day of _____, 20____ (the “**Effective Date**”), is entered into by CITY OF READING, a municipal corporation organized, established and existing under the law of the Commonwealth of Pennsylvania, having an address at 815 Washington Street, Reading, Pennsylvania 19601 (hereinafter referred to as “**Landlord**”), and THE COUNTY OF BERKS, PENNSYLVANIA, a Pennsylvania political subdivision, having a mailing address of 633 Court Street, Reading, Pennsylvania 19601 (hereinafter referred to as “**Tenant**”).

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, consisting of approximately 647.67 +/- acres and located at 611 Skyline Drive, Lower Alsace Township, in the County of Berks, Commonwealth of Pennsylvania, also known as Parcel No. 23531702762194 (collectively, the “**Property**”). Tenant desires to use a portion of the Property as a site for its public safety radio system to serve Berks County’s regional emergency communications and related needs, including, without limitation, establishing multiple transmission towers through Berks County and neighboring areas and possible incorporation of additional radio equipment operating in other parts of the RF spectrum (collectively, the “**System**”). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties, intending to be legally bound, agree as follows:

- 1. LEASE OF PREMISES.** Landlord leases to Tenant a certain portion of the Property containing approximately 6,000- 10,000 +/- square feet, as well as the rights, privileges, easements, appurtenances and improvements belonging thereto (including, without limitation, the air space above such room/cabinet/ground space as described on attached **Exhibit 1**), together with unrestricted access for Tenant’s uses from the nearest public right-of-way along the Property to the Premises, all as described on the attached **Exhibit 1** (collectively, the “**Premises**”). The exact square footage and dimensions of the Premises will be confirmed by the parties in writing prior to site development. Landlord desires to grant to Tenant the right to build a new tower compound adjacent to the existing tower compound on Mt. Penn.
- 2. PERMITTED USE.** Tenant may use the Premises for the development, erection and operation of the System (substantially as it is more fully described on the attached **Exhibit 2**), which may include, but not be limited to, the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communications fixtures and related equipment,

cables, accessories and improvements (which may include a suitable support structure, associated antennas, generator and fuel source therefore, equipment shelters and/or cabinets and fencing), and any other items necessary to the successful and secure use of the Premises, as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the “**Permitted Use**”). Landlord and Tenant agree that any portion of the System that may be conceptually described on **Exhibits 1 and 2** will not be deemed to limit Tenant’s Permitted Use. The parties hereby acknowledge and agree that the description and configuration of the System as depicted in **Exhibits 1 and 2** may be amended and/or replaced prior to Tenant commencing construction of the System based upon factors such as Government Approvals (hereinafter defined in Section 5) and modifications to the System design, as well as space, cost, construction, considerations, ect. In such instance, the parties will amend and/or replace such Exhibits to reflect such changes. If **Exhibits 1 and 2** include drawings of the initial installation of the System, Landlord’s execution of this Agreement will signify Landlord’s approval thereof. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of Landlord’s contiguous, adjoining or surrounding property as described on **Exhibit 1** hereto (the “**Surrounding Property**”), as may reasonably be required during construction and installation of the System. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the main entry point to the equipment shelter or cabinet, and to make Property improvements, alterations, upgrades or additions appropriate for Tenant’s use (“**Tenant Changes**”). Tenant Changes include, without limitation, the right to construct a fence around the Premises and undertake any other appropriate means to secure the Premises, at Tenant’s expense. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the System on the Property. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the System within the Premises at any time during the term of this Agreement. Tenant will be allowed to make such alterations to the Property in order to accomplish Tenant’s Changes or to insure that Tenant’s System complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the System, and Tenant requires an additional portion of the Property (the “**Additional Premises**”) for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises, by a reasonable amount consistent with rental rates then charged for comparable portions of real property being in the same area. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

3. **TERM.**

(a) The initial lease term will be five (5) years ("**Initial Term**"), commencing on the Effective Date. The Initial Term will terminate on the fifth (5th) annual anniversary of the Effective Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year term(s) (each five (5) year term shall be defined as the "**Extension Term**"), upon the same terms and conditions, subject to any rental increases as provided in Section 4, unless the Tenant notifies the Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.

(c) If, at least thirty (30) days prior to the end of the fourth (4th) Extension Term, Tenant has not given Landlord written notice of its desire that the term of this Agreement end at the expiration of the fourth (4th) Extension Term, then upon the expiration of the fourth (4th) Extension Term this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter until terminated by Tenant by giving to Landlord written notice of its intention to so terminate at least six (6) months prior to the end of any such annual term. Notwithstanding the foregoing, and in any event, the Lease shall terminate automatically on the twenty-ninth (29th) anniversary of the Effective Date. Monthly rental during such annual terms shall increase each year by one percent (1%) over the rent paid for the last month of the immediately preceding term (commencing with the fourth (4th) Extension Term). If Tenant remains in possession of the Premises after the termination of this Agreement then Tenant will be deemed to be occupying the Premises on a month to month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement at the monthly Rent called for in this Agreement at the time of such holdover.

(d) The Initial Term, all of the Extension Terms and the Holdover Term are collectively referred to as the Term ("**Term**").

4. **RENT.**

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "**Rent Commencement Date**"), Tenant will pay the Landlord a nominal monthly rental payment during the Term of One Dollar (\$1.00) ("**Rent**"), at the address set forth above, on or before the fifth (5th) day of each calendar month in advance. Tenant may prepay Rent out any time for any period of time, without premium or penalty.

(b) All charges payable by Tenant under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of the foregoing sentence shall survive the termination or expiration of this Agreement.

5. **APPROVALS; LEASE CONTINGENCIES.**

(a) Notwithstanding the foregoing or anything herein in to the contrary, Landlord agrees that this Lease and Tenant's ability to use the Premises are expressly

contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability to obtain and maintain all regulatory, administrative and governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation any and all applications for zoning permits and variances, zoning ordinance amendments, land development approvals, environmental permits and approvals, special use permits, construction permits, licenses and FCC licenses, permits and approvals (collectively, the "**Government Approvals**"). As of the Effective Date, Tenant shall have the right to enter upon the Property to inspect, survey, test, evaluate, assess, measure or appraise the Property, including without limitation the Premises, and/or to perform such other due diligence as Tenant deems necessary in its sole discretion, all at Tenant's expense, to determine the suitability and feasibility of the Premises for Tenant's intended use thereof. Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims relating to physical damage to the Property (including without limitation the Premises) or personal injuries to third persons arising out of Tenant's entry upon the Property (including without limitation the Premises) pursuant to the terms of this paragraph. These provisions shall survive the expiration or earlier termination of this Agreement.

(b) In furtherance of the foregoing and subject to the indemnity provisions above, Tenant shall have a continuing right to perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests, reports or due diligence on, over, and under the Property, necessary to determine if the Tenant's use of the Premises will (continue to) be compatible with Tenant's engineering specifications, systems, designs, operations or Governmental Approvals.

(c) Further, as of the Effective Date, Tenant at Tenant's expense, and as Landlord's limited agent pursuant hereto, shall have the right to seek and obtain all Government Approvals. The authority granted above by Landlord to Tenant shall include, without limitation, the power to: (i) file an application or applications for land development, land subdivision or reverse land subdivision, conditional use, special exception, and variances under, and/or amendment of, applicable zoning, subdivision and land development ordinances with the appropriate governmental authorities, agencies, councils, boards, commissions, etc.; (ii) appear before such authorities, agencies, councils, boards, commissions, etc.; and (iii) perform all such other acts in order to obtain all necessary final Government Approvals of the System as may be necessary. **This agreement is intended to be coupled with an interest and create a valid and present interest in the subject property in favor of Tenant for purposes of qualifying Tenant as a "landowner" as contemplated by the Pa. Municipalities Code and to have standing to seek the above Government Approvals.** Landlord, at no expense to Landlord, agrees to cooperate with Tenant and take all actions and execute, notarize and deliver to Tenant within five (5) business days of Landlord's receipt thereof, all documents that Tenant determines are reasonably necessary for Tenant to obtain such Government Approvals.

6. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Paragraph 15 of this Agreement after the applicable notice and cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the System as now or hereafter intended by Tenant (including without limitation all Government Approvals); or if Tenant determines at any time in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(c) by Tenant upon written notice to Landlord for any reason (or no reason), at any time prior to commencement of construction by Tenant; or

(d) by Tenant after commencement of construction upon sixty (60) days prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to one (1) month's Rent, at the then current rate; provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any one or more of Paragraphs 6(a), 6(b), 6(c), 8, 11(d), 18, 19 or 23(j) of this Agreement.

7. INSURANCE. Tenant will carry during the Term, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of Two Million Dollars (\$2,000,000.00) combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. The coverage afforded by Tenant's commercial general liability insurance shall apply to Landlord as an additional insured, but only with respect to Landlord's liability arising out of its interest in the Property. Notwithstanding anything to the contrary in this Agreement, the parties hereby confirm that the provisions of this Section shall survive the expiration or earlier termination of this Agreement.

8. INTERFERENCE.

(a) Where there are existing radio frequency user(s) on the Property, the Landlord will provide Tenant with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Premises will comply with all Federal Communications Commission (FCC) regulations regarding interference with existing radio frequency user(s) on the Property so disclosed by Landlord.

(b) **Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property, if such use adversely affects or interferes with the System, or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.**

(c) **Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the System, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease immediately (but in no event more than 24**

hours) after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, for Landlord's breach of this Agreement, to elect to enjoin such interference or to terminate this Agreement upon notice to Landlord.

(d) This Section shall survive expiration or earlier termination of this Agreement.

9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the System or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord or its employees or agents, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages.

(d) This Section shall survive expiration or earlier termination of this Agreement.

10. WARRANTIES.

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents and warrants that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement, or any court order, binding on the Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will provide promptly to

Tenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement substantially in the form of attached Exhibit 3.

11. ENVIRONMENTAL.

(a) Landlord represents and warrants that the Property is free of hazardous substances as of the date of this Agreement, and, to the best of Landlord's knowledge, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in or on the Property.

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) the indemnifying party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Property and activities conducted by the party thereon, unless the environmental conditions are caused by the other party.

(c) The indemnifications of this Paragraph 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of government action, intervention or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon notice to Landlord.

12. ACCESS. At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the System and any utilities serving the Premises. Landlord grants to Tenant an easement for such access and utilities, and Landlord agrees to provide to Tenant such codes, keys and other

instruments necessary for such access at no additional cost to Tenant. Landlord acknowledges that in the event Tenant cannot access the Premises, Tenant shall incur significant damage. If Landlord fails to provide the access granted by this Paragraph 12, such failure shall be a material default under this Lease. Upon Tenant's request, Landlord will execute a separate recordable easement reasonably satisfactory to Tenant evidencing this right. In the event any public utility is unable to use the access or easement provided to Tenant, then the Landlord agrees to grant additional access or an easement either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.

13. REMOVAL/RESTORATION. All portions of the System brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the System constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Notwithstanding the foregoing, at least ninety (90) days prior to the termination of this Agreement, Tenant shall give Landlord the opportunity to purchase the System located on the Property from Tenant at fair market value at the end of the Term (determined by an appraiser mutually acceptable to the parties). If Landlord elects to take title to the System located on the Property, Tenant shall convey same by Bill of Sale in "AS IS" condition at the end of the Term and Tenant shall have no further obligations or rights with respect thereto. If Landlord does not elect to take title to such property, within one hundred eighty (180) days of the termination of this Agreement Tenant will remove all of Tenant's above-ground improvements and Tenant will, to the extent reasonable, restore the Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation, nor will Tenant be required to remove from the Premises or the Property any subsurface foundations or underground utilities.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from the Landlord. When submetering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send

such forms to such address and/or agent designated by Tenant. Tenant will remit payment within thirty days of receipt of the usage data and required forms. Failure by Landlord to perform this function will limit utility fee recovery by Landlord to a 12-month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least 24 hours advanced notice of any planned interruptions of said electricity. Landlord acknowledges Tenant's intended use of the Premises, which requires electrical power to operate and must operate twenty-four (24) hour per day, seven (7) day per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, the Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Tenant. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) failure to provide access to the Premises or to cure an interference problem within twenty-four (24) hours after receipt of written notice of such default; or (ii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure or as otherwise provided herein. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant.

16. ASSIGNMENT/SUBLEASE. Tenant will have the right to assign this Agreement (including selling its rights to the transmission tower and reasonably related equipment, apparatus, etc.) or to sublease the Premises and its rights herein (including renting antenna space on the System to third parties), in whole or in part, upon written notice to

Landlord. Notwithstanding the foregoing, Tenant and Landlord shall share in any rental income derived from the assignment/subletting of any space on the System as follows: (i) for any assignments/subleases to governmental and non-profit agencies and authorities or for purely public services/purposes, to the extent that rent is charged to these entities as determined by the Tenant in its sole discretion, Tenant and Landlord shall split (50%/50%) all annual net rental revenues generated by such subleases; and (ii) for assignments/subleases to private/for-profit parties (but not including those as part of a sale of Tenant's rights to the tower, etc. as referenced above). Tenant and Landlord shall split equally (50/50) all annual net rental revenues generated by such subleases. For purposes of the foregoing, the term "net rental revenues generated by subleases" shall mean all rental revenues received by Tenant from such third party subleases less the reasonable amount of those reasonable costs and expenses actually incurred by Tenant in owning and operating the System at the Premises (including, without limitation, maintenance and repair costs, utilities, driveway maintenance, taxes, etc., but not including any base rent hereunder (to the extent greater than nominal)). On or before March 1 of each calendar year under this Lease, Tenant shall forward to Landlord its share of such rentals, together with a reasonably detailed calculation thereof. Tenant's calculations shall be final and binding absent error. Neither the foregoing revenue sharing provisions, in particular, nor the terms of this Lease, generally, shall apply to the existing County tower at or near the Property pursuant to the certain lease between Landlord and Tenant dated March 23, 2006.

17. NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Tenant: County of Berks
Attention: County Commissioners
633 Court Street
Reading, PA 19601

With a copy to: County of Berks
Attention: Solicitor
633 Court Street
Reading, PA 19601

Berks County Department of Emergency Services
Attention: Director
2561 Bernville Road
Reading, PA 19605

If to Landlord: City of Reading
Attn: Managing Director

815 Washington Street
Reading, PA 19601

With a copy to: City of Reading
Attn: Solicitor
815 Washington Street
Reading, PA 19601

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord will send the below documents to Tenant. In the event Tenant does not receive such appropriate documents, Tenant shall not be responsible for any failure to pay the current landlord:

- a. New Deed to Property
- b. Bill of Sale or Transfer (if applicable)
- c. New Payment Direction Form
- d. Full contact information for new Landlord including all phone

numbers

18. CONDEMNATION. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its System, moving expenses, prepaid Rent, and business dislocation expenses, provided that any award to Tenant will not diminish Landlord's recovery. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis as of the date of taking.

19. CASUALTY. The parties will provide notice to each other of any casualty affecting the Property of which each becomes aware within forty-eight (48) hours of the casualty. If any part of the System or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. If notice of termination is given, or if Landlord or Tenant undertake to rebuild the System, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until such time as Tenant is able to activate a replacement transmission facility at another location or the reconstruction of the System is completed.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the System or any portion thereof. The System shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law and Landlord consents to Tenant's right to remove all or any portion of the System from time to time in Tenant's sole discretion and without Landlord's consent.

21. TAXES. *Landlord shall be responsible for payment of all ad valorem taxes levied upon the lands, improvements and other property of Landlord. Tenant shall be responsible for all taxes (if any) levied upon Tenant's leasehold improvements (including any equipment building and tower) on the Premises. Landlord shall provide Tenant with copies of all assessment notices on or including the Premises immediately upon receipt, but in no event later than thirty (30) days after receipt by Landlord. If Landlord fails to provide such notice within such time frame, Landlord shall be responsible for all increases in taxes for the year covered by the assessment. Tenant shall have the right to contest, in good faith, the validity or the amount of any tax or assessment levied against the Premises by such appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Tenant may deem appropriate. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate in the institution and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant.*

22. SALE OF PROPERTY. If Landlord, at any time during the Term of this Agreement, decides to sell, subdivide or rezone any of the Premises, all or any part of the Property or Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such sale, subdivision or rezoning shall be subject to this Agreement and Tenant's rights hereunder. Landlord agrees not to sell, lease or use any areas of the Property or Surrounding Property for the installation, operation or maintenance of other wireless communications facilities if such installation, operation or maintenance will interfere with Tenant's Permitted Use as determined by radio propagation tests performed by Tenant in its reasonable discretion, any such testing to be at the expense of Landlord or Landlord's prospective purchaser, and not Tenant. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, in its reasonable discretion, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment. Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property for non-wireless communication use. In the event the Property is transferred, the new landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in Rent to the new landlord. The provisions of this Paragraph 22 shall in no way limit or impair the obligations of Landlord under Paragraph 8 above.

23. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties.

(b) **Memorandum/Short Form Lease.** Either party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease. Either party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

(c) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(f) **Interpretation; Existing Lease.**

(i) Unless otherwise specified, the following rules of construction and interpretation apply: (1) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (2) use of the term "including" will be interpreted to mean "including but not limited to"; (3) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (4) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (5) use of the terms "termination" or "expiration" are interchangeable; and (6) reference to a default will take into consideration any applicable notice, grace and cure periods; and (7) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement.

(ii) The existing lease between the parties dated March 23, 2006 with respect to the Tenant's existing telecommunications tower on the Property (the "Existing Lease") shall remain in effect as to such existing tower and the rights and responsibilities of the parties in connection therewith, except that such Existing Lease is hereby amended to eliminate the right early termination and to make the term thereof co-terminus with the Term of this Lease (including all Extension Terms).

(g) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent

and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrance of the Premises. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **No Electronic Signature/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

(i) **Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.

(j) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which shall be considered on and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. It being understood that all parties need not sign the same counterpart.

(k) **Survival.** All indemnity provisions contained herein survive expiration or early termination of this Agreement.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and effective as of the date first written above.

“LANDLORD”

City of Reading

By: _____

Name: _____

Title: _____

“TENANT”

THE COUNTY OF BERKS, PENNSYLVANIA

By: _____

Mark C. Scott, Chair
County Commissioner

By: _____

Kevin S. Barnhardt
County Commissioner

By: _____

Christian Y. Leinbach
County Commissioner

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

EXHIBIT 1
DESCRIPTION OF PREMISES

EXHIBIT 2

DESCRIPTION OF SYSTEM

***NOTE: FOR PRELIMINARY DISCUSSION PURPOSES. DESCRIPTION WILL BE UPDATED PRIOR TO EXECUTION AND SUBMITTED TO LANDLORD FOR REVIEW. THEREAFTER, EXHIBITS 1 AND 2 SUBJECT TO FURTHER CHANGE AS PROVIDED IN SECTION 2 OF THE LEASE AGREEMENT.**

EXPLANATION OF PROPOSED SYSTEM

SPECIFICATIONS:

1. Undeveloped Land (no tower)

For a site without an existing tower, it is anticipated that a transmission site will include addition of the following:

- a. A 300' self supporting tower (or per design) suitable for general communications use including two way radio antennas, panel antennas, microwave dishes, etc.
- b. A 12 foot by 20 foot, one-story shelter (or per design) will be installed within the transmission site boundaries for the purpose of providing sufficient space for the public safety radio system, as well as licensed microwave radio equipment.
- c. Security fencing surrounding the tower, shelter and generator equipment.
- d. Emergency Generator
 1. A propane-fueled electrical generator and propane storage tank will be installed within the transmission site boundaries to provide backup power to the shelter, in the event of a commercial power outage.

Or

2. A diesel-fueled electrical generator with integral fuel-storage tank will be installed within the transmission site boundaries to provide backup power to the shelter, in the event of a commercial power outage.
- e. Microwave dish antennas will be installed on the tower as part of this project, along with elliptical waveguide.

- f. Antennas will be installed on the tower as part of this project, with coaxial transmission lines, and receive tower-top amplifiers (TTAs), where necessary.

EXHIBIT 3
FORM OF SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

[FOLLOWS ON NEXT PAGE]

Prepared by and Return to:

Property Address/ID: _____

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT (“Agreement”), dated as of the date below, between _____ having its principal office at _____, (hereinafter called “**Mortgagee**”) and CITY OF READING, having a mailing address of 815 Washington Street, Reading, Pennsylvania 19601 (hereinafter called “**Landlord**”), and THE COUNTY OF BERKS, PENNSYLVANIA, a Pennsylvania political subdivision, having a mailing address of 633 Court Street, Reading, PA 19601 (hereinafter called “**Tenant**”).

W I T N E S S E T H :

WHEREAS, Tenant has entered into a certain lease dated _____, 20__, (the “**Lease**”) with Landlord, covering property more fully described in **Exhibit 1** attached hereto and made a part hereof (the “**Premises**”); and

WHEREAS, Landlord has given to Mortgagee a mortgage (the “**Mortgage**”) upon property having a street address of _____, being identified as Parcel No. _____ in the _____ of _____, _____ County, Commonwealth of Pennsylvania (“**Property**”), a part of which Property contains the Premises; and

WHEREAS, the Mortgage on the property is in the original principal sum of _____ (\$_____) Dollars, which Mortgage has been recorded in the appropriate public office in and for _____ County, Pennsylvania (“**Mortgage**”); and

WHEREAS, Tenant desires to be assured of continued occupancy of the Premises under the terms of the Lease and subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. So long as this Agreement will remain in full force and effect, the Lease is and will be subject and subordinate to the lien and effect of the Mortgage insofar as it affects the real property and fixtures of which the Premises forms a part (but not Tenant's trade fixtures and other personal property), and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal sum secured thereby and interest thereon, with the same force and effect as if the Mortgage had been executed, delivered, and duly recorded among the above-mentioned public records, prior to the execution and delivery of the Lease.

2. In the event Mortgagee takes possession of the Premises as mortgagee-in-possession, including but not limited to, by deed in lieu of foreclosure or foreclosure of the Mortgage, Mortgagee agrees not to affect or disturb Tenant's right to possession of the Premises and any of Tenant's other rights under the Lease in the exercise of Mortgagee's rights so long as Tenant is not then in default, after applicable notice and/or grace periods, under any of the terms, covenants, or conditions of the Lease.

3. In the event that Mortgagee succeeds to the interest of Landlord or other landlord under the Lease and/or to title to the Premises, Mortgagee and Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease; accordingly, from and after such event, Mortgagee and Tenant will have the same remedies against one another for the breach of an agreement contained in the Lease as Tenant and Landlord had before Mortgagee succeeded to the interest of Landlord; provided, however, that Mortgagee will not be:

- (a) personally liable for any act or omission of any prior landlord (including Landlord); or
- (b) bound by any rent or additional rent which Tenant might have paid for more than the payment period as set forth under the Lease (one month, year etc.) in advance to any prior landlord (including Landlord).

4. In the event that Mortgagee or anyone else acquires title to or the right to possession of the Premises upon the foreclosure of the Mortgage, or upon the sale of the Premises by Mortgagee or its successors or assigns after foreclosure or acquisition of title in lieu thereof or otherwise, Tenant agrees not to seek to terminate the Lease by reason thereof, but will remain bound unto the new owner so long as the new owner is bound to Tenant (subject to paragraph 3 above) under all of the terms, covenants and conditions of the Lease.

5. Mortgagee understands, acknowledges and agrees that notwithstanding anything to the contrary contained in the Mortgage and/or any related financing documents, including, without limitation, any UCC-1 financing statements, Mortgagee will acquire no interest in any furniture, equipment, trade fixtures and/or other property installed by Tenant on the Property. Mortgagee hereby expressly waives any interest which Mortgagee may have or acquire with respect to such furniture, equipment, trade fixtures and/or other property of Tenant now, or hereafter, located on or affixed to the

Property or any portion thereof and Mortgagee hereby agrees that same do not constitute realty regardless of the manner in which same are attached or affixed to the Property.

6. This Agreement will be binding upon and will extend to and benefit the successors and assigns of the parties hereto and to any assignees or subtenants of Tenant which are permitted under the Lease. The term "Mortgagee", when used in this Agreement will be deemed to include any person or entity which acquires title to or the right to possession of the Premises by, through or under Mortgagee and/or the Mortgage, whether directly or indirectly.

MORTGAGEE (CORPORATION)

STATE/Commonwealth of _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ date of _____, 20____, by _____ (name of representative) the _____ (title) of _____ (name of banking institution), a _____ on behalf of the bank () who is personally known OR () who produced _____ as identification, and in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the bank by himself/herself as such officer.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1 TO SNDA
DESCRIPTION OF PREMISES

**BILL NO. _____ 2011
AN ORDINANCE**

**AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF
READING, CHAPTER 1 ADMINISTRATION AND GOVERNMENT, PART 5 BOARDS,
DEPARTMENTS, COMMISSIONS, COMMITTEES AND COUNCILS,
PART C HUMAN RELATIONS COMMISSION**

THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The Human Relations Commission Ordinance outlines the City's position on discrimination.

SECTION 2. Amending the City of Reading Codified Ordinances Chapter 1 Administration and Government, Part 5 Boards, Departments, Commissions, Committees and Councils, Part C Human Relations Commission by adding various definitions, decreasing the number of Commissioners by two (2), providing for the appointment of attorneys and hearing examiners for probable cause hearings and increasing the penalties for violations of the Human Relations Commission Ordinance to make them consistent with the Fair Housing Act as attached in Exhibit A.

SECTION 3. This Ordinance shall become effective 10 days from the passage of Council.

Enacted _____, 2011

President of Council

Attest:

City Clerk
(LAW DEPT.)

Submitted to Mayor: _____

Date: _____

Received by the Mayor's Office: _____

Date: _____

Approved by Mayor: _____

Date: _____

Vetoed by Mayor: _____

Date: _____

EXHIBIT A

C. Human Relations Commission; Discrimination.

§1-521. Legislative Findings and Declaration of Policy.

1. Legislative Findings.

- A. The population of the City consists of people of many races, colors, religions, ancestries, sexual orientations, gender identities or expressions, national origins, ages, sex and familial status. Some suffer from handicaps. Others have previously filed charges of discrimination with the Commission of Human Relations or a similar State or Federal agency. Some of these citizens, for one or more of the above mentioned reasons, are discriminated against in employment opportunities, places of business, public accommodations, resort, recreation and amusement, housing facilities and the obtaining of loans and the extending of credit for housing accommodations.
- B. Discrimination because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, handicap or previous opposition to individual discriminatory practices is contrary to the constitutions, laws and policies of the Commonwealth of Pennsylvania and the United States of America.
- C. Discrimination in employment prevents the gainful employment of segments of the residents of the City, tends to impair the City's productive capacity, reduces the public revenues, imposes substantial financial burden upon the public for relief and welfare, and tends to create breaches of the peace and depressed living conditions which breed crime, vice, juvenile delinquency and disease, and is detrimental to the public safety, economic growth and general welfare of the City.
- D. Discrimination in housing results in overcrowded, segregated areas with substandard, unsafe and unsanitary living conditions, which cause increased mortality, disease, crime, vice and juvenile delinquency, fires and risk of fire, intergroup tensions and other evils, all of which increase the cost of government and reduce the public revenues, and result in injury to the public safety, health and welfare of the City.
- E. Discrimination in places of public accommodation, resort, recreation, amusement and places of business, causes humiliation, embarrassment and inconvenience to residents and visitors of the City, tends to create breaches of the peace, intergroup tensions and conflicts and similar evils, and is detrimental to the public safety, general welfare and economic growth of the City.

2. Declaration of Policy.

- A. It is hereby declared to be the policy of the City, in the exercise of its powers for the protection of the public safety and the general welfare, for the maintenance of peace and good government and for the promotion of the City's trade, commerce and manufacture, to assure the right and opportunity of all persons to participate in the social, cultural, recreational and economic life of the City and to insure equal opportunity for all persons to live in decent housing facilities, free from restrictions because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, handicap or previous filing of a complaint of discrimination.

- B. To accomplish these goals, it shall be the public policy of the City to prohibit discrimination because of race, color, religion, ancestry, sexual orientation and gender identity or expression, national origin, age, sex, familial status, handicap or previous filing of a complaint of discrimination in employment, housing and places of business, public accommodation, resort, recreation or amusement.
(Ord. 6-2002, 3/13/2002)

§1-522. Scope.

This Part applies to discriminatory practices including, but not limited to, discrimination in employment, housing and public accommodations, including places of business, which occur within the territorial limits of the City and to employment, contracted for, performed or to be performed within these limits, and to housing accommodations and places of business, public accommodation, resort, recreation and amusement located within the territorial limits of the City.
(Ord. 6-2002, 3/13/2002)

§1-523. Definitions.

As used in this Part, the following terms shall have the meanings indicated, unless a different meaning clearly appears from context:

ACCESSIBLE - with respect to covered multifamily dwellings that the public or common use areas of the building can be approached, entered and used by persons with individual handicaps.

AGE - includes any person 40 and above and shall also include any other person so protected by further amendment to the Federal Age Discrimination in the Employment Act.

AGGRIEVED PERSON - such person or persons who believe that they have been injured or will be injured by a discriminatory employment, housing or public accommodations act or practice that has occurred or is about to occur.

COMMISSION - the Commission of Human Relations established in the office of the Mayor of the City by this Part.

COMPENSATORY DAMAGES – A sum of money awarded in a civil action by a court to indemnify a person for the particular loss, detriment or injury suffered as a result of the unlawful conduct of another.

COMPLAINANT – the person (including the Commission) who files a complaint under section 532.

CONCILIATION – the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the Respondent, and the Commission.

CONCILIATION AGREEMENT – a written agreement setting forth the resolution of the issues in conciliation.

DISCRIMINATE and DISCRIMINATION - includes any difference in treatment based on race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, handicap or previous filing of a complaint of discrimination.

DISCRIMINATORY HOUSING PRACTICE - an act that is either unlawful under the provisions of this Part or is unlawful under §§804, 805, 806 or 818 of the Federal Fair Housing Act, or §§955 or 955(h) of the Pennsylvania Human Relations Act.

DWELLING – any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as a residence by one or more families and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

EMPLOYER - any person who employs five or more employees, exclusive of the parents, spouse or children of such person, including the City, its department, boards, commissions and authorities, and any other governmental agency within its jurisdiction. The term "employer," with respect to discriminatory practices based on a class protected under this Part, includes religious, fraternal, charitable and sectarian corporations and associations employing four or more persons in the City.

EMPLOYMENT AGENCY - any person regularly undertaking, with or without compensation, to procure opportunities for employment or to procure, recruit, refer or place employees.

FAMILIAL STATUS - one or more individuals, who have not obtained the age of 18 years being domiciled with:

1. A parent or another person having legal custody of such individual or individuals.
2. The designee of such parent or other person having such custody, with the written permission of such parent or other person.
3. Any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

FAMILY – includes a single individual.

FEDERAL FAIR HOUSING ACT - Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3600-3620.

GENDER IDENTITY OR EXPRESSION – the actual or perceived gender identity, appearance, behavior, expression or physical characteristics whether or not associated with an individual’s assigned sex at birth.

HANDICAP - with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of having such an impairment; or being regarded as having such an impairment - **but such term does not include current or illegal use of addiction to a controlled substance (as defined in the Pennsylvania Consolidated Statutes).**

HOUSING ACCOMMODATION - any building, structure, or portion thereof which is occupied as or designed or intended for occupancy as a resident by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

LABOR ORGANIZATION - any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms of conditions of employment, or of other mutual aid or protection in relation to employment.

LENDING INSTITUTION - any bank, insurance company, savings and loan association, or any other person regularly engaged in the business of lending money or guaranteeing loans.

NONJOB RELATED HANDICAP or DISABILITY - any handicap or disability which does not substantially interfere with the ability to perform the essential functions of the employment which a handicapped person applies for, is engaged in, or has been engaged in. Uninsurability or increased cost of insurance under a group or employee insurance plan does not render a handicap or disability job related.

OWNER - includes the owner, co-owner, lessee, sublessee, mortgagee, assignee, manager, agent or any other person having equitable or security interest in any housing accommodation, including the City and its departments, boards, commissions and authorities.

PENNSYLVANIA HUMAN RELATIONS ACT - the Act of 1955, October 27, P.L. 744, No. 222, §1, as amended, 43 P.S. §951 *et seq.*

PERSON - any individual, partnership, corporation, labor organization or other organization or association including those acting in a fiduciary or representative capacity, whether appointed by a court or otherwise. The term "person," as applied to partnerships or other organizations or associations, includes their members, and as applied to corporations, includes their officers.

PUBLIC ACCOMMODATION, RESORT or AMUSEMENT - any accommodation, resort or amusement which is open to, accepts or solicits the patronage of the general public including, but not limited to, inns, taverns, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or consumption on the premises; bars, stores, parks or anywhere that liquor is sold; ice cream parlors, soda fountains and all stores where beverages of any kind are sold for consumption on the premises; drug stores, clinics, hospitals, swimming pools; barber shops, beauty parlors; retail stores; theaters, movie houses; race courses, skating rinks, amusement, recreation parks and fairs; bowling alleys, gymnasiums, shooting galleries and billiard and pool halls; public libraries, kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses and all education institutions under the supervision of this City; nonsectarian cemeteries; garages and all public conveyances operated on land or water or in the air as well as the stations, terminals and airports thereof; financial institutions; and all City facilities and services including such facilities and services of all political subdivisions thereof; but shall not include any accommodations which are in the nature distinctly private.

REAL ESTATE BROKER - any natural person, partnership, corporation or other association which for a fee or other valuable consideration manages, sells, purchases, exchanges or rents or negotiates, or offers or attempts to negotiate the sale, purchase, exchange or rental of, the real property of another, or holds itself out as engaged in the business of managing, selling, purchasing, exchanging or renting the real property of another, or holds itself out as engaged in the business of managing, selling purchasing, exchanging or renting the real property of another, or holds itself out as engaged in the business of managing, selling, purchasing, exchanging or renting the real property of another or collects rent for the use of the real property of another, and includes real estate salesmen or agents or any other person employed by real estate broker to perform or to assist in the performance of his business.
(Ord. 6-2002, 3/13/2002)

RESPONDENT – the person or other entity in a complaint of an unfair housing or employment practice and any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 532.

SEXUAL ORIENTATION – Actual or perceived heterosexuality, homosexuality or bisexuality.

§1-524. Human Relations Commission.

1. There is hereby established in the City of Reading, under the supervision of the Managing Director, a Human Relations Commission to administer, implement and enforce the provisions of this Part.
2. The Commission shall consist of ~~nine~~ **seven** members each to be appointed by the Mayor for a four year term. Commissioners may be reappointed to successive terms of office. Each member of the Commission shall continue to serve after his term until his successor has been appointed and qualified. Vacant seats on the Commission shall be filled within 90 days.
3. The Commission shall elect one of its members as chairman and may elect such other officers as it may deem necessary. The Chairman may, with the approval of the Commission, appoint such committees as may be necessary to carry out the powers and duties of the Commission, and the Commission may authorize such committees to take any necessary action for the Commission.
4. The Commission shall adopt such rules and regulations for its own organization, operations and procedures as the Commission shall deem necessary to administer, implement and enforce this Part.
5. The Commission shall hold at least eight meetings during each calendar year. ~~Five~~ **Four** members of the Commission, **or a majority of current Commission members**, shall constitute a quorum for the transaction of business, and a majority vote of those present at any meeting shall be sufficient for any official action taken by the Commission.
6. The members of the Commission shall serve without compensation but upon resolution of Council, they may be reimbursed for all necessary expenses incurred in the performance of their duties in accordance with appropriations made by Council.
7. In the event no Commissioner shall be able and available to exercise any of the powers or fulfill any of the duties of the Commission as set forth in §1-525, the Mayor may appoint one or more Commissioners temporarily to assume the powers and/or fulfill the duties of the Commission. Such appointment may be limited in duration of term and in scope of the power and duties of any Commissioner so appointed.

8. Removal of Members – Any member may be removed for misconduct or neglect of duty or for other just cause by a majority vote of Council taken after the member has received fifteen days advance notice of the intent to take such vote. Failure of a member to attend three (3) consecutive regular meetings of the Board will constitute grounds for immediate removal from the Board by City Council. Failure of a member to attend at least 50% of the regular meetings of the Board in a calendar year will constitute grounds for immediate removal from the Board by City Council. The Chairperson of the Board shall inform the City Clerk in writing when a member has failed to comply with this attendance policy. Following such notification, City Council may vote to remove the member and seek applicants to fill the vacant position.

§1-525. Powers and Duties of Commission.

The Human Relations Commission shall have the power and it shall be its duty to:

- A. Initiate, receive, investigate and seek the satisfactory adjustment of complaints charging unlawful practices, as set forth in this Part.
- B. Issue subpoenas for persons and for documents which may be necessary to properly investigate a complaint of discrimination filed pursuant to this Part. Commissioners may not be subpoenaed to testify, nor may a Commissioner be deposed or otherwise interrogated with respect to any action taken on behalf of the Commission. Any complaint filed under this subsection which the Commission believes may constitute a violation of a law of the United States of America or the Commonwealth of Pennsylvania may be certified to the City Solicitor for such actions as he may deem proper.
- C. Hold public hearings, subpoena witnesses and compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith require the production of evidence relating to any matter under investigation or any question before the Commission, make findings of fact, issue orders and publish such findings of fact and orders and do all other things necessary and proper for the enforcement of this Part.
- D. In the performance of its duties, the Commission may cooperate with and, if appropriate, contact interested citizens, private agencies and agencies of the Federal, State and local governments, and enter into such agreements as may be necessary to formalize such relationships.
- E. Request staff, provided by the City to the Human Relations Commission, other departments, boards and commissions of the City government to assist in the performance of its duties, and such other departments, boards and commissions shall cooperate fully with the Commission. **To appoint attorneys and hearing examiners and other employees and**

agents as it may deem necessary, fix their compensation within the limitations provided by law and prescribe their duties.

- F. Hold investigative hearings upon request by Council in cases of racial tension and/or discrimination.
- G. Assist in the enforcement of fair practices in City contracts.
- H. Render, from time to time, a written report of its activities and recommendations to the Mayor and Council.
- I. Adopt such rules and regulations as may be necessary to carry out the purposes and provisions of this Part. Such rules and regulations shall be in writing and be made available to parties upon request.
(Ord. 6-2002, 3/13/2002)

§1-526. Unlawful Employment Practices.

It shall be an unlawful employment practice, except where based upon applicable national security regulations established by the United States, by the Commonwealth of Pennsylvania, or by any political subdivision of the Commonwealth having jurisdiction in the City, or where based upon a bona fide occupational qualification:

- A. For any employment to refuse to hire any person or otherwise, to discriminate against any person with respect to hiring, tenure, compensation, promotion, discharge or any other terms, conditions or privileges directly or indirectly related to employment because of race, color, religion, ancestry, sexual orientation, gender identity or expression national origin, age, sex, familial status, nonjob related handicap, or previous filing of a complaint of discrimination.
- B. For any employer, employment agency or labor organization to establish, announce or follow a policy of denying or limiting through a quota system or otherwise, the employment or membership opportunities of any person or group of persons because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, nonjob related handicap or previous filing of a complaint of discrimination.
- C. For any employer, labor organization, employment agency or any joint labor management committee controlling apprentice training programs to deny or to withhold from any person the right to be admitted to or participate in a guidance program, an apprenticeship training program, and on the job training program or any other occupational training program because of race, color, religion, ancestry, sexual orientation, gender

identity or expression, national origin, age, sex, familial status, nonjob related handicap or previous filing of a complaint of discrimination.

- D. For any employer, employment agency or labor organization to require of any applicant for employment or membership any information concerning race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, nonjob related handicap, or previous filing of a complaint of discrimination, except when necessary to affirmatively promote minority hiring or promotion.
- E. For any employer, employment agency or labor organization to publish or circulate, or to cause to be published or circulated any notice or advertisement relating to employment or membership which indicates any discrimination because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, nonjob related handicap or previous filing of a complaint of discrimination.
- F. For any employment agency to fail or refuse to classify properly or refer to employment or otherwise to discriminate against any person because of race, color, religion, ancestry, sexual orientation, gender identity or expression national origin, age, sex, familial status, nonjob related handicap or previous filing of a complaint of discrimination.
- G. For any employer to confine or limit recruitment or hiring of employees, with intent to circumvent the spirit and purpose of this Part, to any employment agency, employment service, labor organization, training school, training center or any other employee referring source which serves persons who are predominantly of the same race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, nonjob related handicap or previous filing of a complaint of discrimination.
- H. For any labor organization to discriminate against any person in any way which would deprive or limit his employment opportunities or otherwise adversely affect this status as an applicant for employment or as an employee with regard to tenure, compensation, promotion, discharge or any other terms, conditions or privileges directly or indirectly related to employment because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, nonjob related handicap or previous filing of a complaint of discrimination.
- I. For any employer, employment agency or labor organization to discriminate against any person because he has opposed any practice forbidden by this Part or because he had made a complaint or testified or

assisted in any manner in any investigation or proceeding under this Part or a substantially similar State and/or Federal law.

- J. For any person, whether or not an employer, employment agency or labor organization, to aid, incite, compel, coerce or participate in the doing of any act declared to be unlawful employment practice by this Part or to obstruct or prevent any person from enforcing or complying with the provisions of this Part or any rule, regulation or order of the Commission, or to attempt, directly or indirectly, to commit any act declared by this Part to be an unlawful employment practice.
- K. Notwithstanding any provision of this Section, it shall not be an unlawful employment practice for a religious corporation or association to hire or employ any person on the basis of the sex or religion of that person in those certain instances where sex or religion is a bona fide occupational qualification because of the religious beliefs, practices or observances of the corporation or association.
(Ord. 6-2002, 3/13/2002)

§1-527. Unlawful Housing Practices.

It shall be an unlawful housing practice except as otherwise provided in this Section:

- A. For an owner, real estate broker or any other person to refuse to sell, lease, sublease, rent, assign or otherwise transfer, or to refuse to negotiate for the sale, lease, sublease, rental, assignment or other transfer of the title, leasehold, or other interest in any housing accommodation to any person, or to represent that any housing accommodation is not available for any inspection, sale, lease, sublease, rental, assignment or other transfer when in fact it is so available, or otherwise make unavailable any housing accommodation from any person because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, handicap (of the buyer, renter, a person residing in or intending to reside in the dwelling after it is sold, rented or made available, or any person associated with that person), or previous filing of a complaint of discrimination, or to discriminate against, segregate or assign quotas to any person or group of persons in connection with the sale, lease, sublease, rental, assignment or other transfer of the title, leasehold, or other interest in any housing accommodation or housing accommodations.
- B. For any person, including any owner or real estate broker, to include in the terms, conditions or privileges of any sale, lease, sublease, rental, assignment or other transfer of any housing accommodation any clause, condition or restriction discriminating against, or requiring any other person to discriminate against, any person in the use or occupancy of

such housing accommodation because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age or sex, familial status, handicap (of the buyer, renter, a person residing in or intending to reside in the dwelling after it is sold, rented or made available, or any person associated with that person) or previous filing of a complaint of discrimination.

- C. For any person, including any owner or real estate broker, to discriminate in the furnishing of any facilities or services for any housing accommodation because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, handicap (of the buyer, renter, a person residing in or intending to reside in the dwelling after it is sold, rented or made available, or any person associated with that person) or previous filing of a complaint of discrimination.
- D. For any person to:
 - (1) Refuse to permit, at the expense of the handicapped person, the making of reasonable modifications to the existing premises occupied or to be occupied if such modifications may be necessary to afford the handicapped person full enjoyment of the premises, except that, in the case of a rental, the landlord may, when it is reasonable to do so, condition permission for the requested modification on the renter's agreement to restore the interior of the premises to the condition that existed prior to the modification, reasonable wear and tear excepted.
 - (2) Refuse to make reasonable accommodations with respect to the rules, policies, practices or services as necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.
- E. For any person to fail, in connection with the design and construction of multifamily dwellings covered under the provisions of the Federal Fair Housing Act, and after March 13, 1991, to design and construct dwellings in such a manner that such dwellings are not accessible within the meaning of the Federal Housing Act.
- F. The dwellings have at least one building entrance on an accessible re-route, unless it is impractical to do so because of the terrain or unusual characteristics of the site:
 - (1) With respect to a dwelling with a building entrance on an accessible route:

- (a) The public use and common portions of the dwellings are readily accessible and usable by handicapped persons.
 - (b) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs.
 - (c) All premises with covered multifamily dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. As used in this Section, the term "covered family dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.
- G. For any person, including any owner or real estate broker, to publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind relating to the sale, rental, lease, sublease, assignment, transfer or listing of a housing accommodation or accommodations which indicates any preference, limitation, specification or discrimination based on race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status or handicap (of the buyer, renter, a person residing in or intending to reside in the dwelling after it is sold, rented or made available, or any person associated with that person).
- H. For any person, including any bank, banking organization, mortgage company, insurance company or other financial or lending institution, or any agent or employee thereof, regardless of whether application is made for financial assistance for the purchase, sale, lease, acquisition, brokering, appraisal, construction, rehabilitation, repair, maintenance or the purchasing of loans or providing other financial assistance for purchasing, constructing improving, repairing or maintaining a dwelling or secured by residential real estate of any housing accommodation or housing accommodations:
 - (1) To discriminate against any person or group of persons because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, handicap (of the buyer, renter, a person residing in or intending to reside in the dwelling after it is sold, rented or made available, or any person

associated with that person) or previous filing of a complaint of discrimination of such person or group of persons or of the prospective occupants or tenants of such housing accommodation in the granting, withholding, extending, modifying or renewing, or in the rates, terms, conditions or privileges of any such financial assistance or in the extension of services in connection therewith.

- (2) To use any form of application for such financial assistance or to make any record of inquiry in connection with application for such financial assistance which indicates, directly or indirectly, any limitation, specification or discrimination.
- I. For any real estate broker or real estate salesman or agent, or any other person for business or economic purposes, to induce, directly or indirectly, or to attempt to induce directly or indirectly, the sale or rental or the listing for sale or rental, of a housing accommodation by representing that a change has occurred or will or may occur with respect to racial, religious or ethnic composition of the street, block, neighborhood or area in which such housing accommodation is located, or to communicate to any prospective purchaser or renter of a dwelling that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, sex, handicap, or familial status.
 - J. For any person to deny another access to, or membership or participation in a multiple listing service, real estate brokers organization, or other service because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, handicap or previous filing of a complaint of discrimination, or to discriminate with respect to the terms or conditions of such access, membership or participation therein because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, handicap or previous filing of a complaint of discrimination, or to discriminate with respect to the terms or conditions of such access, membership or participation therein because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, handicap or previous filing of a complaint of discrimination.
 - K. For any person, whether or not a real estate broker, real estate salesman or agent, owner or lending institution to aid, incite, compel, coerce or participate in the doing of any act declared to be an unlawful housing practice under this Part, or to obstruct or prevent enforcement or compliance with the provisions of this Part or any rule, regulation or order

of the Human Relations Commission, or to attempt, directly or indirectly, to commit any act declared by this Part to be an unlawful housing practice.

- L. For any person to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this Part.
- M. For any person, based on the racial or ethnic composition of a community, neighborhood or development, or based on the characteristics of an individual or individuals which place such individual or individuals within a class protected by this Part, to discriminate with respect to the provision of municipal services or with respect to the provision of property, casualty, fire, hazard or other similar insurance.
- N. With respect to any property held for noncommercial purpose, nothing in this Section shall bar any religious or denomination, institution or organization or charitable or educational organization which is operated, supervised or controlled by or in connection with a religious organization or any bona fide private or fraternal organization from limiting preference to persons of the same religion or denomination or to members of such private or fraternal organization or from making such selection as is reasonable for the organization to promote the religious or fraternal principles, aims or purposes for which such organization is established or maintained unless membership in such religious or denominational institution or organization or charitable or educational organization is restricted on account of race, color or national origin.

(Ord. 6-2002, 3/13/2002)

§1-528. Unlawful Lending Practices.

It shall be an unlawful lending practice for a lending institution:

- A. To deny, withhold, limit or otherwise discriminate against any person or group of persons because of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, handicap (of the buyer, renter, a person residing in or intending to reside in the dwelling after it is sold, rented or made available, or any person associated with that person) or previous filing of a complaint of discrimination, in lending money or extending credit.
- B. To establish unequal terms or conditions in the contract for loans and mortgages, or other extensions of credit because of race, color, religion, ancestry, sexual orientation, gender identity or expression,

national origin, age, sex, familial status, handicap (of the buyer, renter, a person residing in or intending to reside in the dwelling after it is sold, rented or made available, or any person associated with that person) or previous filing of a complaint of discrimination.
(Ord. 6-2002, 3/13/2002)

§1-529. Unlawful Public Accommodation Practices.

It shall be an unlawful public accommodation practice:

- A. For any owner, lessor, proprietor, manager, agent or employer of any business or place of public accommodation, resort, recreation or amusement to:
 - (1) Refuse, withhold from or deny to any person because of his race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status handicap or previous filing of a complaint of discrimination, either directly or indirectly, any of the accommodations, advantages, facilities, services or privileges, products or goods of such place of public accommodation, resort or amusement.
 - (2) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations advantages, facilities, goods, products, services and privileges of any such place shall be refused, withheld or denied to any person on account of race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, handicap or previous filing of a complaint of discrimination, or that the patronage of any person of any particular race, color, religion, ancestry, sexual orientation, gender identity or expression, national origin, age, sex, familial status, handicap or previous filing of a complaint of discrimination is unwelcome, objectionable or not acceptable, desired or solicited.
- B. For any person, whether or not included in this Section, to aid, incite, compel, coerce or participate in the doing of any act declared to be an unlawful public accommodations practice under this subsection.
(Ord. 6-2002, 3/13/2002)

§1-530. Obstruction of Fair Practices.

It shall be unlawful for any person, whether or not within the named classifications set forth in this Part, to aid, incite, compel, coerce or participate in the doing of any act declared to be an unlawful practice under this Part, or to obstruct or prevent enforcement of compliance with the provisions of this Part or any rule, regulation or

order of the Human Relations Commission or to attempt, directly or indirectly, to be an unlawful practice.

(Ord. 6-2002, 3/13/2002)

§1-531. City Contracts.

1. All contracts of the City and its contracting agencies shall obligate the contractor to comply with this Part and with any State or Federal law or laws or regulations relating to unlawful employment practices in connection with any work to be performed thereunder, and shall require the contractor to include a similar provision in all subcontracts.

2. The Human Relations Commission shall promulgate rules and regulations for the processing of complaints of discrimination received under this Section.

(Ord. 6-2002, 3/13/2002)

§1-532. Procedure.

1. A complaint charging that any person has engaged, is engaging or will engage in any unlawful practice as set forth in this Part may be made by the Human Relations Commission, or to the Commission by an aggrieved person or by an organization which has one of its purposes the combating of discrimination for the promotion of equal opportunities, and any complaint may be amended by the complainant or the Commission at any time before final action has been taken by the Commission, in accordance with such rules and regulations as the Commission shall prescribe. No complaint shall be considered unless it is filed with the Commission within 180 days after the occurrence of the alleged unlawful practice.

2. The complaint shall be in writing, signed, verified and ~~notarized~~ and include the name and address of the person or persons alleged to have committed the unlawful practice and the particulars thereof, and such other information as may be required by the Commission.

3. **After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission shall make a prompt investigation in connection therewith.** The Commission shall commence proceedings on any formal complaint within 30 days of the filing. **Within ten days of docketing the complaint,** ~~The~~ **the** parties shall each receive promptly a copy of the complaint along with a concise statement of the procedural rights of such parties, **unless otherwise impracticable to do so.** The respondent shall be afforded the right to file an answer to such complaint within ~~such time as not to delay the proceedings~~ ten days, but failure to file such answer shall not prevent the Commission from commencing its investigation as provided herein. **Upon filing of the complaint, the Commission shall**

encourage voluntary and informed predetermination settlements between parties.

4. The Commission shall institute and complete the investigation of any formal complaint within 100 days of the filing of the formal complaint: **unless it is impracticable to do so.**
5. If, pursuant to its investigation, the Commission shall determine that there is no basis for the allegations in a complaint, the complaint shall be dismissed and the complainant and respondent notified in writing of such determination. Within 20 days from the receipt of such notice, the complainant or his attorney, if any, may file with the Commission a request for review and the Commission shall provide the parties and their attorneys an opportunity to appear before the Commission or a member thereof for such purpose. After such a review, the Commission may reverse its decision or, if the Commission or its representative determines that there is no basis for the allegation, the dismissal of the complaint shall be affirmed and there shall be no further review of such decision.
6. If the Commission determines after investigation that probable cause exists for the allegations made in the complaint, it shall promptly notify the parties in writing and may attempt to eliminate the alleged unlawful practice by means of private conferences, meetings or conciliation with all parties. Any conciliation agreement arising from such efforts shall be in writing, signed by the parties or their representative, and shall be subject to the approval of the Commission. A conciliation agreement shall be made public unless the parties otherwise agree and the Commission determines that disclosure of the terms of the agreement is not required to further the purpose of this Part.
7. **Prompt Judicial Action:** If the Commission determines that a housing accommodation or housing accommodations involved in a complaint of an unlawful housing practice under §1-527 may be sold, rented or otherwise disposed of before a determination of the case has been made, and the Commission believes that judicial action is necessary to effectuate the purpose of this Part, the Commission may request the City Solicitor to seek an injunction restraining the sale, rental or other disposition of the housing accommodation or housing accommodations in accordance with the provisions of §9.1 of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, added by Act No. 533, approved January 24, 1966, as hereafter amended, supplemented or modified by the General Assembly of Pennsylvania.
8. In any case of failure to eliminate the unlawful practice charged in the complaint by means of informal proceedings, or in advance thereof, if, in the judgment of the Commission the facts so warrant, the Commission may hold a public hearing to determine whether or not an unlawful practice has been committed. Without holding such a hearing, the Commission may certify the case to the City Solicitor in accordance with subsection (7), hereof.

9. Where a public hearing is ordered, the ~~Commission~~ **Executive Director of the City of Reading Human Relations Commission** shall designate one or more members or a Hearing Examiner to conduct such a hearing. The Commission shall serve upon the person charged with having engaged or engaging in the unlawful practice ~~or amended complaint and~~ a notice of the time and place of the hearing. In addition, the Commission shall provide the Respondent with notice of procedural rights and obligations. The hearing shall be held ~~not less than 20 days after the service of the statement of charges.~~ **within 120 days following the issuance of the probable cause determination unless it is impracticable to do so.**
10. The respondent shall have the right to file an answer to the statement of charges, to appear at the hearing in person or to be represented by an attorney or, subject to the approval of the hearing panel, by any other person, and to examine and cross examine witnesses. The complainant shall also have the right to be represented by an attorney or, subject to the approval of the hearing panel, by any other person. The Commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and shall be transcribed.
11. With respect to a complaint alleging an unlawful housing practice arising under §1-527, in lieu of proceeding before the Commission pursuant to this subsection, any party may elect, within 20 days of receipt of the charge, to have the claims contained in the charge decided in a civil action tried by a court of competent jurisdiction. The party making such election shall notify the Commission and all other interested parties within 10 days of making such election. The complainant shall be represented by an attorney in a civil action instituted pursuant to an election made under this subsection. Representation of the complainant shall be at the Commission's expense and such representation shall include presentation of the complainant's case at the public hearing.
12. ~~Subsequent to the public hearing, a transcription of the testimony shall be ordered and, when completed, distributed to all of the Commissioners for review. Upon review, the Commissions shall meet to discuss and decide the case.~~ **One or more Commissioners of the Commission or a permanent hearing examiner designated by the Commission shall constitute the Commission for any hearing required to be held by the Commission. The recommended findings, conclusions and order made by this (these) members or by the hearing examiner will be reviewed and approved or reversed by the Commission.** A vote by a majority of the Commissioners shall be necessary to find that the respondent has engaged in an unlawful practice. A decision shall be rendered within 45 days of the close of testimony or the final post-hearing submission of the parties, if any., **unless it is impracticable to do so.**

13. If upon all the evidence presented, the Commission finds that the respondent has not engaged in any unlawful practice, it shall state its findings of fact in writing and dismiss the complaint. If upon all the evidence presented, the Commission finds that the respondent has engaged or is engaging in an unlawful practice, it shall state its findings of fact in writing and shall issue such order in writing as the facts warrant to effectuate the purposes of this Part. Such order may require the respondent to cease and desist from such unlawful practice and to take such affirmative action including, but not limited to, the hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, the selling, renting or leasing of a housing accommodation or housing accommodations upon equal terms and conditions and with such equal facilities, services and privileges, the tendering of money, whether or not secured by mortgages or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, the granting, permitting, selling or admission to any of the accommodations, advantages, facilities, services or privileges, products or goods of any respondent place of public accommodation, resort, recreation or amusement, upon such equal terms and conditions to any person discriminated against or to all persons as, in the judgment of the Commission, shall effectuate the purposes of this Part and are warranted by the facts presented at the hearing, including a requirement for a report or reports of the manner of compliance. Compensatory damages may be awarded in appropriate circumstances for a violation of any of the provisions of §1-527. Copies of the order shall be served on all parties.
14. Any adjudication made by the Commission shall be in writing and dated, and shall be deemed to be a final adjudication 5 days after the date of issuance thereof. Parties shall have 30 days from the final adjudication to appeal the decision of the Commission to the Berks County Court of Common Pleas. An appeal from the Commission's order shall act as a supersedes and stay enforcement of such order until a final disposition of the appeal.
15. The Commission shall make a final administrative disposition of a formal complaint within 1 year of the date of receipt of such complaint unless it is impracticable to do so. If the Commission is unable to dispose of the complaint within the time limitation set forth herein, it shall notify the parties in writing of such fact and the reasons therefor. Should the Commission fail to finally adjudicate or otherwise dispose of a formal complaint within the time limit of the filing thereof, any party may commence a civil action for the enforcement of this Part in an appropriate court of competent jurisdiction no later than 2 years after the occurrence or termination of the alleged discriminatory act or practice.
16. An aggrieved person may commence a civil action whether or not a complaint has been filed under this Section and without regard to the status of any such complaint. There shall be no need for a complainant to exhaust administrative remedies with respect to a complaint that could be brought under §1-527, so long

as any action brought is commenced within 1 year of the alleged discriminatory housing practice. The court in which any such action is brought shall be empowered, in appropriate circumstances, to award compensatory and punitive damages as well as equitable relief. However, if the Commission has obtained a conciliation agreement with the consent of the aggrieved person, no action may be filed by such aggrieved person with respect to the discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such agreement.

§1-533. Enforcement.

In the event the respondent refuses or fails to comply with any order of the Human Relations Commission or violates any of the provisions of this Part, the Commission shall certify the case and the entire record of its proceedings to the City Solicitor, who shall invoke the aid of an appropriate court to secure enforcement or compliance with the order or to impose the penalties set forth in §1-534, or both.

Ord. 6-2002, 3/13/2002)

§1-534. Penalty.

1. In addition to any other remedies provided herein, upon a finding of a violation of any provision of this Part relating to unlawful discriminatory housing practices, or any rule or regulation pertaining thereto adopted by the Human Relations Commission, or any order of the Commission, shall be subject to a civil penalty of not more than:

- A. ~~Ten thousand dollars~~ **Sixteen Thousand Dollars** if the respondent has not been adjudged to have committed any prior discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency.
- B. ~~Twenty-five thousand dollars~~ **Thirty Seven Thousand Five Hundred Dollars** if the respondent has been adjudged to have committed one other discriminatory housing practice in any forum set forth in subsection (A), hereof: **and the adjudication was made during the five-year period preceding the date of filing of the charge.**
- C. ~~Fifty dollars~~ **Sixty Five Thousand Dollars** if the respondent has been adjudged to have committed two or more discriminatory housing practices in any forum set forth in subsection (A), hereof: **and the adjudications were made during the seven-year period preceding the date of filing of the charge.**
- D. Respondent shall also be responsible for costs and shall be subject to imprisonment for not more than 1 year. The Commission, in its discretion,

may allow the prevailing party other than the Commission a reasonable attorney's fee and costs. Monetary awards may be given under appropriate circumstances the amount of which shall be based on the record made before the Commission and may include damages caused by humiliation and embarrassment.

§ 1-535 Severability.

The Provisions of this article are severable and if any provisions, sentence, clause, section or part thereof is held illegal, invalid, unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this article or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this article would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the ordinance or any part thereof has been held inapplicable had been specifically exempted there from.

AGENDA MEMO

THOMAS McMAHON, MAYOR
CARL E. GEFFKEN, MANAGING DIRECTOR

TO: City Council
PREPARED BY: Charles M. Jones, P.E., Director of Public Works
MEETING DATE: June 27, 2011
AGENDA MEMO DATE: June 22, 2011
REQUESTED ACTION: Amend the Position Ordinance to add the positions of Project Accountant/Financial Specialist and Wastewater Treatment Plant Utilities Engineer. Secondly, convert the four Maintenance Worker III positions to two Industrial Mechanic positions and two Maintenance Worker III Electrical/Mechanical positions.

RECOMMENDATION

Adopt an amendment of the Position Ordinance to add the positions of Project Accountant/Financial Specialist and Wastewater Treatment Plant Utilities Engineer and convert four positions of Maintenance Worker III to two Industrial Mechanic positions and two Maintenance Worker III Electrical/Mechanical positions.

BACKGROUND

Additional Project Accountant/Financial Specialist and Wastewater Treatment Plant Utilities Engineer oversight is necessary for the Wastewater Treatment Plant Capital Improvements Plan. Secondly, higher maintenance skill sets are needed to retain compliance with the existing wastewater treatment plant and to maintain the advanced equipment associated with the upcoming wastewater treatment plant upgrades.

Four Sewage Plant Operator I positions have recently been eliminated that help offset the salary and wage costs listed above.

BUDGETARY IMPACT

Payroll costs for the Wastewater Treatment Team will be decreased by approximately \$46,550 annually.

PREVIOUS ACTION

None

SUBSEQUENT ACTION

None

REVIEWED BY

Director of Public Works, Director of Administrative Services, Human Resources Manager, City Solicitor, Mayor, and Managing Director

RECOMMENDED MOTION

Approve/Deny the amendment to the Position Ordinance to add the positions of Project Accountant/Financial Specialist and Wastewater Treatment Plant Utilities Engineer and convert four Maintenance Worker III positions to two Industrial Mechanic positions and two Maintenance Worker III Electrical/Mechanical positions.

BILL No. _____-2011

AN ORDINANCE

AN ORDINANCE AMENDING THE 2011 CITY OF READING FULL TIME POSITION ORDINANCE BY CREATING ONE (1) PROJECT ACCOUNTANT/FINANCIAL SPECIALIST, ADDING ONE (1) WASTEWATER TREATMENT PLANT UTILILITES ENGINEER, CREATING TWO (2) INDUSTRIAL MECHANICS, CREATING TWO (2) MAINTENANCE WORKER III-ELECTRICAL/MECHANICAL POSITIONS, AND ELIMINATING FOUR (4) MAINTENANCE WORKER III POSITIONS.

Section 1. Amending the City of Reading 2011 Fill-time Position Ordinance as follows:

- Creating one (1) Project Accountant/Financial Specialist,
- Adding one (1) Wastewater Treatment Plant Utility Engineer
- Creating two (2) Industrial Mechanics
- Creating two (2) Maintenance Worker III-Electrical/Mechanical positions, and
- Eliminating four (4) Maintenance Worker III positions.

Section 2. This ordinance shall become effective ten (10) days after it adoption, in accordance with Section 221 of the City of Reading Home Rule Charter.

Enacted: _____,

2011

President of Council

Attest:

City Clerk

(Managing Director)

Submitted to Mayor: _____

Date: _____

Received by the Mayor's Office: _____

Date: _____

Approved by Mayor: _____

Date: _____

BILL NO. _____-2011

A N O R D I N A N C E

AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT OF COOPERATION BETWEEN THE CITY OF READING AND THE READING SCHOOL DISTRICT FOR THE JOINT SUPPORT OF A RECREATIONAL AND EDUCATIONAL PROGRAM AND CREATION OF THE READING RECREATION COMMISSION.

WHEREAS, the City of Reading and the Reading School District believe that the citizens of the City of Reading will benefit from a jointly supported recreational and educational program; and

WHEREAS, the City of Reading desires to enter into an agreement with the Reading School District to provide a mechanism to maintain community recreation services and facilities as well as the formation of the Reading Recreation Commission; and

NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The Mayor is authorized to execute the attached Agreement of Cooperation as well as any and all documents to facilitate and effectuate the Agreement of Cooperation between the City of Reading and the Reading School District including, but not limited to, the formation of the Reading Recreation Commission.

SECTION 2. This Ordinance shall be effective ten (10) days after passage.

Enacted _____, 2011

President of Council

Attest:

City Clerk

AGREEMENT OF COOPERATION

THIS AGREEMENT, made this ____ day of _____, _____, by and between the CITY OF READING, PENNSYLVANIA, hereinafter called "City;" and the READING SCHOOL DISTRICT, PENNSYLVANIA, hereinafter called "School District;"

WITNESSETH:

WHEREAS, the Intergovernmental Cooperation Act (53 Pa. C.S. Section 2301 et seq., herein called the "Act") permits municipalities (under the Act the term "municipality" includes school districts) to enter into agreements to cooperate in the exercise or performance of their respective functions, powers or responsibilities, including recreation and parks activities; and

WHEREAS, the City and the School District believe that the citizens of the City of Reading will benefit from a jointly supported recreational and educational program, which program shall comply with all applicable laws; and

WHEREAS, the purpose of the Agreement is to provide a mechanism to adequately and efficiently maintain community recreation services and facilities and to organize, manage and supervise recreational and educational programs, with a primary focus and emphasis on programs for youth, within the political boundaries of the City and the School District; and

WHEREAS, the City and the School District are legally authorized to enter into such an Agreement for the joint support of a recreational and educational program.

NOW, THEREFORE, the City and the School District, intending to be legally bound hereby, for and in consideration of the mutual covenants herein contained, for themselves and each of their successors and assigns, agree as follows:

1. Incorporation of Recitals. The above recitals are incorporated herein as if fully set forth.
2. Definitions. As used herein, the following terms shall have the following meanings:
 - (a) "Commission" shall mean the Reading Recreation Commission, to be established as a not-for-profit corporation by Ordinance of the City and Resolution of the School District.
 - (b) "City" shall mean the City of Reading or any authority, commission, bureau, agency or subdivision thereof.
 - (c) "School District" shall mean the Reading School District or any authority, commission, bureau, agency or subdivision thereof.
 - (d) "Property of the School District" or "Property of the City" shall mean the land, improvements, buildings, fixtures and equipment of the School District or the City.

3. Commission Authorization. The City and the School District hereby authorize the creation of the Reading Recreation Commission (herein called "Commission") as a not-for-profit corporation, which shall direct, manage and administer a recreational and educational program pursuant to this Agreement and all amendments thereto.
4. Commission Representation. The Commission shall consist of eleven (11) members, as follows:
 - (a) The School Board shall appoint two (2) members of the Commission who shall be members of the School Board. Such persons shall serve as members of the Commission at the pleasure of the School Board for an indefinite term.
 - (b) The School Board, upon recommendation of the Superintendent of Schools, shall appoint two (2) members of the Commission, both of whom shall be residents of the City and none of whom shall be employees of the City, School District or Commission and none of whom shall be elected or appointed members of any other board, commission or agency, the members of which are elected or appointed by the City or School District. Each such member shall serve for a term of three (3) years, expiring on December 31, except that the initial terms of such members shall expire on December 31, 2012 and 2013. Such members may be reappointed as members of the Commission. Such members may be removed from office at any time for cause or at any time upon recommendation of the Superintendent of Schools approved by the School Board.
 - (c) The Superintendent of Schools shall appoint one (1) member of the Commission who shall be a School District administrative staff member. Such person shall serve as a member of the Commission at the pleasure of the Superintendent of Schools for an indefinite term.
 - (d) The City Council shall appoint two (2) members of the Commission who shall be members of the City Council. Such persons shall serve as members of the Commission at the pleasure of the City Council for an indefinite term.
 - (e) The City Council, upon recommendation of the Mayor, shall appoint two (2) members of the Commission, both of whom shall be residents of the City and none of whom shall be employees of the City, School District or Commission and none of whom shall be elected or appointed members of any other board, commission or agency, the members of which are elected or appointed by the City or School District. Each such member shall serve for a term of three (3) years, expiring on December 31, except that the initial terms of such members shall expire on December 31, 2012 and 2013. Such members may

be reappointed as members of the Commission. Such members may be removed from office at any time for cause or at any time upon recommendation of the Mayor approved by the City Council.

- (f) The Mayor shall appoint one (1) member of the Commission who shall be a City administrative staff member. Such person shall serve as a member of the Commission at the pleasure of the Mayor for an indefinite term.
- (g) The City Council, upon recommendation of the Mayor, and the School Board, upon recommendation of the Superintendent of Schools, shall appoint one (1) additional member of the Commission, who shall be a resident of the City and who shall not be an employee of the City, School District or Commission and who shall not be an elected or appointed member of any other board, commission or agency, the members of which are elected or appointed by the City or School District. The appointment of such member shall alternate between the City Council and the School District. The initial appointment of such member shall be by the City Council, upon recommendation of the Mayor. Such member shall serve for a term of three (3) years, expiring on December 31, except that the initial term of such member shall expire on December 31, 2014. When the initial term of office expires, the appointment of such member shall be by the School Board. Such member may be reappointed as a member of the Commission by either the City Council or School Board. Such member may be removed from office at any time for cause or at any time upon recommendation of the Mayor approved by the City Council or by recommendation of the Superintendent of Schools approved by the School Board.
- (h) Vacancy. Any vacancy on the Commission (whether by reason of death, disqualification, resignation or removal of a member thereof) shall be filled by the School Board, Superintendent of Schools, Mayor or City Council as shall be applicable. Any vacancy in a term of office of a resident appointed by City Council upon recommendation of the Mayor or School Board upon recommendation of the Superintendent of Schools shall be filled for the unexpired term of office. If a Commission member who is required to maintain his or her residence in the City ceases to be such a resident, his or her membership shall terminate automatically, and his or her position on the Commission shall be declared vacant. When a Commission member who is required to be an elected member of the City Council or School Board or an administrative staff member of the City or School District is no longer serving as such an elected official or employee, his or her membership on the Commission shall terminate automatically.

- (i) Attendance. The Commission may request the removal of any member by the City and the School District for a repeated lack of attendance at meetings. Any member missing three (3) consecutive meetings, unexcused, or attending less than 50% of regularly scheduled meetings during one calendar year is subject to the Commission's recommending that the member be removed for cause. The City and the School District have the absolute and final authority to either remove or not remove the member from the Commission.

5. Duties of Commission – Powers.

- (a) Purpose. The Commission shall organize, supervise, administer, maintain and operate a recreational and educational program for the residents of the City of Reading with a primary focus and emphasis on offering affordable sports, recreation and learning opportunities for Reading youth. The program, functions and powers of the Commission shall be those as delegated to the Commission by the City Council and the School Board and as otherwise permitted by law.
- (b) Employment of Personnel. The Commission may, for the purposes of carrying out its purposes, employ and terminate such personnel as it shall deem proper. The compensation of such personnel shall be fixed by the Commission. All employees of the Commission shall be paid through the Commission. All existing City recreation division employees shall become Commission employees. The Commission shall employ an Executive Director (“Director”), who shall serve at the Commission’s pleasure, subject to any contractual stipulations and who shall be responsible for the selection and hiring of all other personnel, including supervisors, instructors and leaders. All Commission employees shall be required to possess Act 151 and Act 34 clearances prior to their start of employment. The Director shall be required to attend and make reports at all regular and special meetings of the Commission and may participate in any discussion undertaken during such meetings, but shall have no voting rights with respect thereto and shall not be entitled to vote at any such meeting. Executive sessions of the Commission may be held without the attendance of the Director only to determine the performance evaluation, or compensation, of the Director, at the discretion of the Commission. The Director will be entitled to attend all other executive sessions of the Commission.
- (c) Conduct of Business. The Commission shall establish its own form of organization as a not-for-profit corporation and appropriate rules and regulations for the conduct of its business, including adopting its own by-

laws. Said by-laws shall incorporate any and all provisions set forth in this Agreement with regard to the conduct of Commission business and shall be reviewed and commented upon by the governing bodies of the City and the School District. The Commission shall receive administrative support from the City and the School District for all matters with respect to its duties.

- (d) **Officers.** The Commission shall elect a Chairperson, Vice Chairperson, Secretary and Treasurer from the membership of the Commission. The Chairperson shall act as chair at all duly called meetings and shall be empowered to execute, together with an attestation by the Secretary, all legally binding documents on behalf of the Commission. The Vice Chairperson shall serve in the absence of the Chairperson. The Secretary or his/her designee shall record the Commission's actions and be custodian of the Commission's records. The Treasurer or his/her designee shall receive and expend all Commission funds and shall keep an accounting of all of the Commission's finances including, but not limited to, employee payroll. The Treasurer shall also present monthly reports regarding the finances of the Commission to the Commission members. The Commission shall organize annually at the first meeting of each year, which shall be held in January. All officers shall be elected at the Commission's January organizational meeting and serve a one (1) year term of office, expiring December 31. If an officer ceases to be a member of the Commission, a successor shall be elected.
- (e) **Commission Meetings.** The Commission shall have regularly scheduled monthly meetings. The Chairperson of the Commission may, when he or she deems it necessary or desirable, and shall, upon the request of four members of the Commission and/or the Director, call a special meeting of the Commission for the purpose of transacting any business designated in the call of the meeting. The call for any regular and special meeting shall be in accordance with the Pennsylvania Sunshine Act.
- (f) **Quorum.** When a majority of Commission members [six (6) or more members] are present at a Commission meeting, a quorum will be met, and official actions may be taken.
- (g) **Voting.** Each member of the Commission shall have one (1) vote.
- (h) **Establishment of Advisory Committees.** The Commission may establish advisory committees as deemed necessary or desirable for the operation of the Commission. The number of advisory committees and members assigned to the committees shall be established by the entire Commission.

- (i) Annual Report/Audit. The Commission shall submit an annual report and financial audit of its activities to the City and the School District on or before April 1 of each year.

6. Finances.

- (a) Fiscal Year – Budget. The Commission shall prepare an annual accounting to include all of its financial operations and activities on a calendar year basis beginning on January 1 of each year. On or before October 1 of each year, the Commission shall prepare a budget, which budget shall include in detail the costs and expenses expected to be incurred by the Commission in the performance of its duties for the succeeding calendar year. Such budget shall also include the amounts of income or funds which the Commission expects to receive from sources other than the City and the School District. Any remaining income or funds which the Commission budgets as necessary for the performance of its duties shall be budgeted as cash contributions to be received from the City and the School District in accordance with paragraph 8 hereof. Such budget shall not include any expenditure for any item agreed to be an in kind contribution pursuant to paragraph 7 hereof. The budget shall be available for review at any time by the City and the School District. Any excess funds remaining after the conclusion of a calendar year shall be applied to the fund balance of the Commission or used for such other purposes as the Commission may determine and approve at a regular or special meeting.
- (b) Approval of Contribution Amount. The contribution amount shall be submitted to the City administration and the City Council for approval and to the School District administration and the School Board for approval on or before October 1 of each year. Upon approval of the contribution amount by the City Council and the School Board, the City Council and the School Board shall cause the City and the School District to contribute to the Commission their respective cash contributions as shown in the budget and as computed in accordance with paragraph 8 hereof. No increase in the amount of the current cash contribution shall be effective if disapproved by the governing body of the City or School District prior to the end of October of each year. Such disapproval shall be immediately communicated orally or in writing to the other participant and to the Commission. Contributions by the City and the School District shall not exceed an increase of more than five (5%) percent of the previous year's contribution without unanimous approval of the City Council and the School Board. If the contribution amount has not been so approved by January 1 of the next calendar new fiscal year, the prior year's

contribution shall remain operative until such approval has been given to the Commission.

7. In Kind Contributions.

(a) Property. The City and the School District agree to make available without charge for use by the Commission the real property, herein called "Property," of the City and the School District when the use of the Property by the Commission will not interfere with or conflict with the usage thereof by the City or the School District or by third parties which have been granted permission to use the Property by the City or the School District, or be contrary to any legal restrictions or obligations relating to the use of the Property. The City and the School District shall have full control over whether or not to grant permission to the Commission for use of any Property.

(1) The in kind contribution shall include in accordance with the terms of this Agreement:

(A) The use of the Property of the City, including the office location for the Commission at the 3rd and Spruce Street Recreation Center;

(B) The use of the Property of the School District;

(C) The contribution of the costs and expenses related to or associated with the Property, including building and grounds maintenance, repair, insurance, air conditioning, police and fire protection, water, sewer, utilities and all other items of cost and expense.

(2) The in kind contribution shall not include the costs and expenses for janitorial services, clean-up or special property protection with respect to a specific event of the Commission which are incurred only because of the Commission's use of the Property. These costs and expenses of the City or the School District shall be included in the Commission's budget and reimbursed by the Commission.

(b) Maintenance of Property. The City and the School District agree to be responsible for and maintain all Property that they own and that are used by the Commission in a safe and reasonable condition.

(c) Capital Improvements. The City and the School District agree to be responsible for capital improvements to facilities and Property that they own and further agree that the Commission shall not be responsible for making any such capital improvements.

- (d) Existing Agreements. This Agreement and the duties of the Commission hereunder shall not interfere with any existing lease agreements or licenses among the City or the School District or by and between the City and the School District and any third party. Any such agreements or licenses shall remain in full force and effect, and the powers and duties of the Commission are subject to any such agreements or licenses.
- (e) Rules and Regulations. The School District and the City may adopt and enforce reasonable rules and regulations relating to the Commission's use of their respective Property; provided that such rules and regulations shall not require the Commission's expenditure of funds for services or items agreed to be contributed in kind.
- (f) Solicitor Services. The City and the School District agree to provide solicitor services to the Commission as an in kind contribution as needed.

8. Cash Contributions.

- (a) First Year Operating Budget. In addition to the in kind contributions as set forth in paragraph 7 hereof, the City and the School District agree to contribute to the Commission in accordance with its budget, the amounts of cash as are necessary to fund the first year operation of the Commission. Cash contributions to the Commission shall begin on January 1, 2012.
 - (1) The City shall contribute \$488,000.
 - (2) The School District shall contribute an amount determined by the following formula: Annual Contribution = \$7.50 x ADM. ADM is the average daily membership of pupils for the preceding fiscal year as reported by the School District to the Pennsylvania Department of Education.
 - (3) In each year thereafter, the City and the School District contribution amount shall be determined in accordance with paragraph 6 hereof.
- (b) Cash Contribution Payments. The City and the School District shall make payments to the Commission in four (4) equal installments at the beginning of each quarter (January, April, July and October).

9. Insurance.

- (a) Liability Insurance. The City and the School District shall obtain and maintain liability insurance which names the Commission, its directors, officers, employees and agents as named insured with respect to the Commission's

duties and activities with limits not less than \$1,000,000 per occurrence for injury or damage to persons or property.

- (b) Casualty Loss Insurance. The City and the School District shall each maintain with respect to their respective property, such casualty loss insurance as they shall deem appropriate. All such insurance shall contain waiver of subrogation rights against the City, School District or Commission as applicable.
- (c) Directors and Officers Insurance. The Commission shall obtain and maintain public officials “directors and officers” insurance coverage for its members.

10. Effective Date, Term – Termination.

- (a) Effective Date and Term. This Agreement shall be effective July 1, 2011 and shall be for a term of five (5) calendar years ending December 31, 2016. The City and the School District may not withdraw from this Agreement during the five (5)-year term of the Agreement. This Agreement shall continue in full force and effect and shall be automatically self-renewed year-to-year thereafter except as otherwise provided in this Agreement.
- (b) Withdrawal. After the initial five (5)-year term, the City and the School District may withdraw from the terms of this Agreement at the end of any calendar year by giving written notice of such withdrawal to the other participant and the Commission one (1) year before the proposed withdrawal date. Any funds contributed by a withdrawing participant shall be retained by the Commission. Withdrawal from this Agreement must be approved by a majority of the voting members of the governing body of the participant which desires to withdraw, voted at a public meeting in accordance with the requirements of the Pennsylvania Sunshine Act and any other applicable laws.
- (c) Expansion. Additional partners may become a participant in this Agreement at the beginning of any calendar year with a majority approval of the City and the School District and upon written agreement of the additional participant to be bound by the terms and conditions of the Agreement. The additional participant will be expected to contribute to the funding of the Commission in accordance with a formula to be determined by the City and the School District.
- (d) Dissolution. In case of dissolution of the Commission by mutual consent of the City and the School District hereto, the equipment, materials, supplies, and capital assets of the Commission that remain shall be distributed to the

City and the School District in proportion to the cumulative contributions of the City and the School District from the date of this Agreement to the time of dissolution.

11. Amendment. This Agreement shall not be amended or altered except in writing duly approved by and signed on behalf of the City and the School District.

12. Entire Agreement. This Agreement constitutes the entire contract by the City and the School District, and there are no other understandings, oral or written, relating to the subject matter hereof.

13. Governing Law. This Agreement shall be governed by the Laws of the Commonwealth of Pennsylvania. This Agreement is adopted pursuant to the Act, and the City and the School District shall take all necessary steps under the Act to comply with the same.

14. Further Action. The City and the School District agree to take all action necessary to carry forth the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

CITY OF READING

By:

Attest: _____
(CITY SEAL)

READING SCHOOL DISTRICT

By:

Attest: _____
(SCHOOL DISTRICT SEAL)

BILL NO. ____-2011

AN ORDINANCE

AN ORDINANCE AMENDING THE 2011 CITY OF READING FULL TIME POSITION ORDINANCE TO REFLECT THE CHANGES MADE NECESSARY BY THE CURRENT COLLECTIVE BARGAINING AGREEMENT FOR THE DEPARTMENT OF FIRE AND RESCUE SERVICES

THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

Section 1. Amending the City of Reading 2011 Full-time Position Ordinance as follows:

- Adding a new category of Fire Fighter 4 Medic and setting the number of positions at 12
- Reducing the number of Fire Fighter 4 positions to 76
- Adding one Fire Fighter 3 position
- Adding five Fire Fighter 1 positions
- Reducing the number of Lieutenant – EMS positions to 3
- Reducing the number of Paramedic positions to 1
- Adding two additional positions for EMS Wheel Chair and Basic Life Support units

Section 2. This ordinance shall become effective ten (10) days after its adoption, in accordance with Section 221 of the City of Reading Home Rule Charter.

Enacted _____, 2011

President of Council

Attest:

City Clerk
(Fire Chief/Council Staff)

Submitted to Mayor: _____

Date: _____

Received by the Mayor's Office: _____

Date: _____

Approved by Mayor: _____

Date: _____

Division	Position Title	2010 # of Employees	2011 # of Employees	Difference
Fire				
Administration				
	Fire Chief	1	1	0
	First Deputy Chief	4	4	0
	Administrative Officer	1	1	0
	Clerk Typist II	1	1	0
		<hr/>	<hr/>	<hr/>
		7	7	0
Fire Prevention				
	Fire Marshal	1	1	0
	Lieutenant-Fire Prevention	2	2	0
		<hr/>	<hr/>	<hr/>
		3	3	0
Training				
	Lieutenant - Training	1	1	0
		<hr/>	<hr/>	<hr/>
		1	1	0
Fire Suppression				
	Second Deputy Chief	4	4	0
	Fire Fighter 4	86	76	(10)
	Fire Fighter 4 Medic	0	14	14
	Fire Fighter 3	10	1	(9)
	Fire Fighter II	0	0	0
	Fire Fighter I (old)	0	0	0
	Fire Fighter I (new)	XX	4	4
	Lieutenant - Suppression	4	4	0
		<hr/>	<hr/>	<hr/>
		104	105	1

AN ORDINANCE

AN ORDINANCE DIRECTING THE BERKS COUNTY BOARD OF ELECTIONS TO PLACE A REFERENDUM QUESTION BEFORE CITY VOTERS ON THE 2011 PRIMARY BALLOT WHICH WOULD AMEND THE CITY OF READING HOME RULE CHARTER BY CHANGING THE QUALIFICATIONS OF THE CITY AUDITOR.

WHEREAS, Section 502 of the Home Rule Charter provides for the eligibility of the City Auditor; and

WHEREAS, the City Auditor is to be an independent watchdog over the City's finances and fiscal well being; and

WHEREAS, the City of Reading City Council recommends this proposed amendment to strengthen the qualifications of this position and ensure the position is filled by a candidate who can successfully achieve the responsibilities listed in the Charter and the Administrative Code.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Directing the Berks County Board of Elections to place the following referendum question to voters of the City of Reading on the 2011 primary ballot:

Home Rule Charter Section 502 – Eligibility of the City Auditor

“Shall the Home Rule Charter be amended by requiring the City Auditor to be a CPA (Certified Public Accountant) and shall have a minimum of five (5) years of experience in business administration, municipal government, accounting, or management.”

Simple Explanation

A CPA (Certified Public Accountant) is the statutory title of qualified accountants in the United States who have passed the Uniform Certified Public Accountant Examination and have met additional state education and experience requirements for certification as a CPA. **Internal Auditors** verify the effectiveness of their organization's internal

controls and check for mismanagement, waste or fraud. They examine their organization's financial and management procedures to make sure they are adequate. They also evaluate the organization's operation, evaluating their efficiency, effectiveness and compliance with government regulations. They ensure revenues are properly received and expenditures are made in accordance with laws and regulations.

Adding the CPA (Certified Public Account) requirement will help to ensure that qualified individuals with in-depth knowledge of accounting principles and practices, including applicable laws and regulations will be elected to this important position. Having an Auditor who has earned the CPA license will also ensure that the person elected to this position has the necessary skills to fulfill the responsibilities listed in the Charter and Administrative Code.

SECTION 2. This ordinance shall become effective ten (10) days after its adoption, in accordance with Section 221 of the City of Reading Home Rule Charter.

Enacted _____, 2010

President of Council

Attest:

City Clerk

Submitted to Mayor: _____

Date: _____

Received by the Mayor's Office: _____

Date: _____

Approved by Mayor: _____

Date: _____

Vetoed by Mayor: _____

Date: _____

BILL NO. ____-2011

AN ORDINANCE

AN ORDINANCE AMENDING THE 2011 CITY OF READING FULL TIME POSITION ORDINANCE BY DECREASING THE NUMBER OF PROPERTY MAINTENANCE SUPERVISORS AND INCREASING THE NUMBER OF PROPERTY MAINTENANCE INSPECTORS WITHIN THE COMMUNITY DEVELOPMENT DEPARTMENT, CODES DIVISION.

THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

Section 1. Amending the City of Reading 2011 Full-time Position Ordinance as follows:

- Decreasing the number of Property Maintenance Supervisors by one (1), to a total of two (2); and
- Increasing the number of Property Maintenance Inspectors by one (1), to a total of 14

Section 2. This ordinance shall become effective ten (10) days after its adoption, in accordance with Section 221 of the City of Reading Home Rule Charter.

Enacted _____, 2011

President of Council

Attest:

City Clerk

(Codes Manager/Council Staff)

Submitted to Mayor: _____

Date: _____

Received by the Mayor's Office: _____

Date: _____

Approved by Mayor: _____

Date: _____

BILL NO. _____-2011

A N O R D I N A N C E

AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT BETWEEN THE CITY OF READING AND THE COMMUNITY PREVENTION PARTNERSHIP FOR THE COORDINATION OF THE WEED AND SEED PROGRAM.

WHEREAS, the City of Reading is interested in entering into an agreement for the coordination of the Weed and Seed Program on an interim basis of ten weeks; and

WHEREAS, Community Prevention Partnership is willing to provide said service to the City of Reading,

NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The Mayor is authorized to execute an agreement (see attached document) between the City of Reading and the Community Prevention Partnership which will provide for the ten week interim coordination of the Weed and Seed Program.

SECTION 2. This Ordinance shall be effective ten (10) days after passage and approval by the Mayor.

Enacted _____, 2011

President of Council

Attest:

City Clerk

TO: Thomas McMahon, Mayor of Reading
FROM: Yvonne Stroman, Weed and Seed Site Coordinator
CC: Frank Dembowski, Chief of Staff, City of Reading
Carl Geffken, City Manager
Cheryl Guthier, Executive Director - Community Prevention Partnership of Berks County

Thank you for your consideration of providing continued resources for the coordinator of the Weed and Seed Initiative for the City of Reading. As you know, state funding for Weed and Seed was eliminated from the Governor's Budget. This has put the continuation of the good work that has already been started in the Weed and Seed area in jeopardy. Residents are empowered; youth are participating in evidenced based programs and families are benefitting from research based programs to improve communication with one another. There has been enhanced law enforcement and residents feel better about the relationships they have formed with police. These achievements are the direct result of the implementation of Weed and Seed Initiative and I ask your consideration in the continuation of the work throughout the next several months.

Community Prevention Partnership is seeking funding to maintain the facilitation and coordination of the Reading Weed and Seed Initiative. Job responsibilities for the Weed and Seed Site will Coordinator include:

- Continuation of the recruit of community leaders, residents and resource providers to the Weed & Seed Steering Committee with a particular focus on the Latino Population
- Provide Weed and Seed Orientation Workshops for community residents that will allow for the development of leadership skills.
- Help residents to develop block captains and re-establish a citizen watch group for the targeted area.
- Work with the Neighborhood Revitalization Group to enhance Lance Place Playground
- Provide technical assistance and support to the 4 sub-committees (Law Enforcement; Prevention, Intervention, and Treatment; Community Policing; and Neighborhood Restoration)
- Facilitate the Steering Committee to assess and update the revitalization plan to ensure Weed and Seed efforts coordinate with the Reading Youth Violence Prevention Project's Blue Print for Action.
- Continue to supervise the current Weed and Seed evidence based and research based programs – Daytime Curfew Project; Within My Reach and CASA START, an evidence-based program that provides at-risk youth with adult guidance, positive school experiences, and social supports.
- Evaluate programs and strategies and coordinate the development of a community resource guide for families to identify and locate service providers to assist them with day-to-day needs to combat crime and violence and address the harm they cause to community life.
- Develop and maintain effective working relationships with Reading Youth Violence Prevention Project staff, local leaders and community organizations to gain support and/or resources to provide new social and economic opportunities for the community
- Provide co-facilitation of the National Youth Leadership Training Initiative. The National Youth Leadership Initiative offers highly interactive sessions that teach what is

required to create and nurture the growth of committed youth leaders and their work within community coalitions. It better equips youth and adults to develop strategic action plans that clearly define the strategies that young people will carry out to address the problems and goals their individual community or coalition is striving to affect.

- Seek additional funding to sustain the efforts of Weed and Seed beyond the summer months.
- Additionally, if funded I will provide oversight and coordination of the implementation of Communities Mobilizing for Change on Alcohol (CMCA), an evidence-based approach to implementing environmental strategies to decrease underage drinking. CMCA is recognized as an evidence-based program listed under the Substance Abuse and Mental Health Services Administration (SAMHSA) model programs.

The City of Reading, through the Weed & Seed Initiative, is a prime opportunity to address the issues of youth-on-youth violence, neighborhood revitalization, prevention strategies and community policing to improve the quality of life in the targeted area. This approach utilizing a specific targeted area is proven to produce favorable outcomes to reducing violence with an opportunity to expand into other areas of the city. Your consideration in this endeavor is greatly appreciated.

Weed and Seed Initiative Funding Requested

Salary for Yvonne Stroman – 600 hours/ 15weeks @ \$28.79/ hour	\$17,274.00
Benefits @ 32%	\$5, 527.68
Total Requested	\$22, 801.68

Explanation of Benefits: These are the standard benefits for employees at Community Prevention Partnership; FICA, Health Insurance inclusive of dental, vision & medical; short term disability; worker’s compensation, unemployment compensation, employee assistance program, retirement and group life.

MEMORANDUM OF AGREEMENT
BETWEEN
CITY OF READING
AND
COMMUNITY PREVENTION PARTNERSHIP OF BERKS COUNTY

CITY OF READING (hereinafter "City") and COMMUNITY PREVENTION PARTNERSHIP OF BERKS COUNTY agree as follows:

Community Prevention Partnership of Berks County has agreed to continue to provide the Seeding portion of the City's Weed and Seed Initiative as outlined in the attached proposal (exhibit A). The cost of providing the services is not to exceed \$22,801.68 and is to be utilized to pay the salary and benefits of the Seed Coordinator.

This agreement begins on August 1, 2011 and will be in effect over the duration of 15 weeks or 600 hours, based on a 40 hour work week.

AGREED by authorized representatives of:

CITY OF READING

COMMUNITY PREVENTION PARTNERSHIP
OF BERKS COUNTY

BY: _____

BY: _____

Name

Name

Title

Title

Date _____

Date _____

BILL NO. _____-2011

A N O R D I N A N C E

AUTHORIZING THE MAYOR TO EXECUTE A LEASE BETWEEN THE CITY OF READING AND THE OLIVET'S BOYS AND GIRLS CLUB FOR A PORTION OF THE REAL ESTATE SITUATE IN PENDORA PARK.

WHEREAS, the City of Reading is the legal owner of certain property known as Pendora Park; and

WHEREAS, the City of Reading intends to enter into a lease of a portion of Pendora Park with Olivet's Boys and Girls Club for the purpose of providing a site for a proposed recreation center pursuant to certain terms and conditions,

NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The Mayor is authorized to execute any and all documents to facilitate and effectuate the lease between the City of Reading and the Olivet's Boys and Girls Club for a portion of the real estate situate in Pendora Park, Reading, Berks County, PA, to provide a site for a proposed recreation center as set forth in the attachment hereto.

SECTION 2. This Ordinance shall be effective ten (10) days after passage.

Enacted _____, 2011

President of Council

Attest:

City Clerk
(Council Staff)

AGENDA MEMO

COMMUNITY DEVELOPMENT

TO: CITY COUNCIL
FROM: DANIEL ROBINSON, DIRECTOR
MEETING DATE: May 9, 2011
AGENDA MEMO DATE: March 29, 2011
REQUESTED ACTION: TO APPROVE AN AMENDMENT TO THE FFY2011 (37TH YEAR - JANUARY 1, 2011 TO DECEMBER 31, 2011) CDBG ACTION PLAN

CD is asking City Council to pass the resolution at the May 9, 2011 City Council meeting.

BACKGROUND: The Community Development Department has \$450,000 available in CDBG unprogrammed funds. CD wishes to utilize the services of a Community Development Corporation or a Non-Profit Organization to administer, provide loan underwriting, and provide loan servicing for a Microenterprise Development Program.

In CDBG, Microenterprise Development Activities must foster the development, support, and expansion of microenterprise businesses.

- A microenterprise must be a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.

Eligible microenterprise activities include:

- Loans, loan guarantees and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;
- Technical assistance, advice, and business services to owners of microenterprises and persons developing microenterprises;

To qualify the microenterprise must meet one of the following requirements:

- The microenterprise owner must be a low and moderate income level person;
- The microenterprise service area must contain at least 51% low and moderate income level persons (and the service area must be predominately residential);
- The microenterprise must be located in a Census Tract that has at least a 20% poverty rate (the poverty rate must be at least 30% if the Census Tract contains part of the central business district).

BUDGETARY IMPACT: None.

PREVIOUS ACTION: None.

SUBSEQUENT ACTION: None

RECOMMENDED BY: Managing Director and Mayor.

RECOMMENDED MOTION: To approve/deny a Council Resolution authorizing the Mayor to execute a FFY2011 (37th CD year - January 1, 2011 to December 31, 2011) Action Plan Amendment to move \$450,000 in CDBG unprogrammed funds to the 2011 Microenterprise Development Activity.

Cc: Carl Geffken
Dan Wright
Neil Nemeth
Alex Palacios
Steve Haver
William Loewenstein, CIDC

RESOLUTION No. _____

**RESOLUTION OF THE COUNCIL OF THE CITY OF READING
AUTHORIZING THE MAYOR TO EXECUTE A FFY2011 (37TH CD YEAR
- JANUARY 1, 2011 TO DECEMBER 31, 2011) ACTION PLAN
AMENDMENT TO MOVE \$450,000 IN CDBG UNPROGRAMMED FUNDS
TO THE 2011 MICROENTERPRISE DEVELOPMENT ACTIVITY**

WHEREAS, under 24 CFR Part 91, the U.S. Department of Housing and Urban Development (HUD) outlines the consolidated submissions for Community Planning and Development programs which will serve as (1) a planning document for the City that builds on a participatory process at the grass roots level; (2) an application for federal funds under HUD's formula grant program; (3) a strategy to be followed in carrying out HUD programs; and (4) an Action Plan that provides a basis for assessing performance;

WHEREAS, the FFY2009 to FFY2013 five year Consolidated Plan (35th to 39th years - January 1, 2009 to December 31, 2013) specifies activities the City will undertake to address priority needs and local objectives using formula grant funds and program income the City expects to receive during a five year period;

WHEREAS, the FFY2011 (37th year - January 1, 2011 to December 31, 2011) Action Plan specifies activities the City will undertake to address priority needs and local objectives using formula grant funds and program income the City expects to receive during the program year;

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF READING THAT:

The FFY2011 (37th CD year - January 1, 2011 – December 31, 2011) Action Plan is amended to move \$450,000 in CDBG unprogrammed funds to the 2011 Microenterprise Development Activity. The activity eligibility / fundability determination is 24CFR570.201(o) Microenterprise Development / low mod area 24CFR570.208(a)(1) - The service area will contain at least 51% low mod persons or low mod limited clientele 24CFR570.208(a)(2) or low mod job creation 24CFR570.208(a)(4).

The Mayor, on behalf of the City of Reading, is authorized and directed to execute the amendment to the satisfaction of HUD.

PASSED COUNCIL _____,
20_____

PRESIDENT OF COUNCIL

ATTEST:

CITY CLERK

RESOLUTION NO. _____

WHEREAS, the City of Reading and the Elm View Apartments Limited Partnership entered into a certain Loan Agreement dated June 22, 1995; and

WHEREAS, the Elm View Apartments Limited Partnership has notified the City of Reading of its intent to enter into an Agreement of Sale of the subject project's property and potential assignment of the City of Reading's loan; and

WHEREAS, the City of Reading has determined that the sale of the Elm View Apartments Limited Partnership project property is in the best interest of the City of Reading; and

WHEREAS, the City of Reading intends to draft an agreement to modify certain terms of the Note securing the monies provided through the June 22, 1995 Loan Agreement between the City of Reading and the Elm View Apartments Limited Partnership.

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS FOLLOWS:

That the City of Reading consents to the sale of the Elm View Apartments Limited Partnership project property and the Mayor of the City of Reading is authorized to execute any and all documents required for the assignment of the above referenced loan and to modify certain Note and/or Loan Agreement terms, including but not limited to deferral of the July 2011 balloon payment, possible forgiveness of said balloon payment, and review of the July 2026 balloon payment for status determination.

Adopted by Council _____, 2011

President of Council

Attest:

City Clerk

(Law)

AGENDA MEMO

COMMUNITY DEVELOPMENT

TO: CITY COUNCIL
FROM: DANIEL ROBINSON, DIRECTOR
MEETING DATE: JUNE 27, 2011
AGENDA MEMO DATE: MAY 13, 2011
REQUESTED ACTION: TO APPROVE AN AMENDMENT TO THE FFY2011
(37TH YEAR - JANUARY 1, 2011 TO DECEMBER 31,
2011) CDBG ACTION PLAN

CD is asking City Council to pass the resolution at the **June 27, 2011** City Council meeting.

BACKGROUND: The administration has asked Neighborhood Housing Services of Greater Berks Inc. to amend the FFY2011 CDBG funded NHS Major System owner-occupied residential rehab activity to spend part (up to 50%) of the CDBG funding in the Ricktown neighborhood and make the program available to persons of any age in the Ricktown neighborhood.

BUDGETARY IMPACT: None.

PREVIOUS ACTION: None.

SUBSEQUENT ACTION: None

RECOMMENDED BY: Managing Director and Mayor.

RECOMMENDED MOTION: To approve/deny a Council Resolution authorizing the Mayor to execute a FFY2011 (37th CD year - January 1, 2011 to December 31, 2011) Action Plan Amendment to add the Ricktown neighborhood component to the Neighborhood Housing Services of Greater Berks, Inc. Major System owner occupied residential rehabilitation activity. NHS will spend part (up to 50%) of the CDBG funding in the Ricktown neighborhood and make the program available to persons of any age in the Ricktown neighborhood.

Cc: Carl Geffken
Steve Haver

Ron Miller, NHS
Neil Nemeth
Dan Wright

RESOLUTION No. _____

RESOLUTION OF THE COUNCIL OF THE CITY OF READING AUTHORIZING THE MAYOR TO EXECUTE A FFY2011 (37TH CD YEAR - JANUARY 1, 2011 - DECEMBER 31, 2011) ACTION PLAN AMENDMENT TO ADD THE RICKTOWN NEIGHBORHOOD COMPONENT TO THE NEIGHBORHOOD HOUSING SERVICES OF GREATER BERKS, INC. MAJOR SYSTEM OWNER OCCUPIED RESIDENTIAL REHABILITATION ACTIVITY NHS WILL SPEND PART (UP TO 50%) OF THE CDBG FUNDING IN THE RICKTOWN NEIGHBORHOOD AND MAKE THE PROGRAM AVAILABLE TO PERSONS OF ANY AGE IN THE RICKTOWN NEIGHBORHOOD.

WHEREAS, under 24 CFR Part 91, the U.S. Department of Housing and Urban Development (HUD) outlines the consolidated submissions for Community Planning and Development programs which will serve as (1) a planning document for the City that builds on a participatory process at the grass roots level; (2) an application for federal funds under HUD's formula grant program; (3) a strategy to be followed in carrying out HUD programs; and (4) an Action Plan that provides a basis for assessing performance;

WHEREAS, the FFY2009 to FFY2013 five year Consolidated Plan (35th to 39th years - January 1, 2009 to December 31, 2013) specifies activities the City will undertake to address priority needs and local objectives using formula grant funds and program income the City expects to receive during a five year period;

WHEREAS, the FFY2011 (37th year - January 1, 2011 to December 31, 2011) Action Plan specifies activities the City will undertake to address priority needs and local objectives using formula grant funds and program income the City expects to receive during the program year;

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF READING THAT:

The FFY2011 (37th CD year - January 1, 2011 – December 31, 2011) Action Plan is amended to add the Ricktown Neighborhood component to Neighborhood Housing Services of Greater Berks, Inc. Major System owner occupied residential rehab activity. The activity will use up to 50% of the CDBG funding for housing units that are located in the Ricktown

Neighborhood [Census Tract-(Block Group) 1-(4,5), 12-(1,2), 13-(1,2,3), 25-(1,3)]. Ricktown Neighborhood grant recipients may fall into any age bracket (not solely elderly persons).

The Mayor, on behalf of the City of Reading, is authorized and directed to execute the amendment to the satisfaction of HUD.

PASSED COUNCIL _____,
20_____

PRESIDENT OF COUNCIL

ATTEST:

CITY CLERK

RESOLUTION NO. _____ 2011

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS FOLLOWS:

Authorizing the public release of the results of the Sewer Investigation, authorized by Bill No. 3-2011 and amended by Bill No. 20-2011 as attached in the Findings of Facts and Conclusions.

Adopted by Council _____, 2011

Vaughn D. Spencer, President of Council

Attest:

Linda A. Kelleher CMC, City Clerk

Sewer Fund Investigation Conducted by the Members of Council

FINDINGS OF FACT AND CONCLUSIONS

Background

In May 2010, while developing the Act 47 Recovery Plan, the City's Act 47 Coordinator, PFM (Public Financial Management) informed the members of Council that un-repaid transfers totaling approximately \$11.2M were taken from the City's Sewer Fund, in violation of the Consent Decree on the City's Wastewater Treatment Plant, issued by the Department of Justice in 2005. The Consent Decree limited the City from withdrawing more than \$3M annually from the Sewer Fund. The need to repay these funds required the City to take an unfunded debt bond totaling \$20M (covering the repayment of the transfers and the associated bond fees) and was authorized by Bill No. 93-2010, enacted November 3, 2010. Unfunded debt must be approved by the Court of Common Pleas. This transaction was approved by President Judge Schmehl on October 28, 2010.

Over the next several months, the members of Council collectively and individually made inquiries to the Administration about these transfers. As the majority of the discussions occurred in Executive Session and the explanations received were deemed confidential by the Administration, the members of Council felt the need to undertake a public investigation, so the results could be publicly released for Reading's taxpayers and made available for future members of City Council who may have questions about the unfunded debt transaction.

On March 14, 2011 Council enacted Bill No. 3-2011 and on April 25, 2011 Council amended by that ordinance by enacting Bill No. 20-2011 to authorize an investigation into the sewer fund transfer matter.

Discovery

City Council began the investigation process by sending a letter with questions to past and present City employees and elected officials who may have had knowledge that the transfers were occurring. City Council issued a letter on April 26, 2011 to the following parties who were employed by the City or who held elected offices over the period of time when the transfers occurred:

- David Cituk, hired Jan 1986 in the Accounting Office; Elected City Auditor 2000-2012 (election in Nov 2011 for new 4 year term)
- Ryan Hottenstein, hired Sept 2003 as Purchasing Manager, Finance Director 2005-2008; Managing Director 2008-2010
- Charles Jones, hired June 2001 as Public Works Director - current
- Patrick Sleppy, hired July 2006 as Staff Accountant -current
- Maria Rodriquez, hired April 2000 as Assistant Auditor – current
- Deborah Hoag, hired Dec 2001 as Utilities Division Manager (included the WWTP); May 2010 Utilities Systems Manager– present (in charge of the Sanitary System only)
- Carl Geffken, hired April 2009 as Finance Director; Administrative Services Director May 2010; Managing Director Jan 2011 – current
- Thomas McMahan, elected 2004-2012 Mayor
- Leon Churchill, hired April 2004-2008 as Managing Director
- Ralph Johnson, hired Aug 2005 as WWTP Superintendent; May 2010- current
- Tammie Kipp, hired Nov 1998 in the Accounting Department; Accounting Manager 2000-2002; Finance Director 2002-2005
- Dawn Cieniewicz, hired Feb 2002-2010 as Accounting Manager

The letter contained the following questions:

- a. Who(m) ultimately directed the use of the sewer funds outside of the governing laws of the City of Reading?
- b. Who(m) decided and collaborated not to include City Council in the financial decision making process?
- c. What criteria were used to determine the funds should be taken?
- d. What budget amendments were suggested to address the related financial concerns?
- e. Why no efforts were made to meet with City Council to discuss more appropriate actions?
- f. What entities or organizations (internal and external) were utilized for guidance in the decisions?
- g. What controls existed in the spending of those dollars?
- h. What analysis was done to identify the original revenue weaknesses?
- i. Who, if anyone, provided any legal guidance to those involved?

- j. What financial trail exists to determine the dollars were appropriately spent?
- k. Was there in any way a deliberate and conspiring effort to not inform City Council of the actions that were being taken?
- l. What was the complete financial impact/exposure to the City of Reading due to loss revenue, lack of budget adjustments, legal and financial costs, interest payments on replacement costs, and any and all other related costs to this matter.
- m. What, if any, actions could be taken to remedy any losses, liabilities and costs that were a result of any inappropriate, illegal, or malfeasant behavior(s) that may be determined.
- n. What systemic changes could be taken to assure the general public any inappropriate, illegal, or malfeasant behaviors that may be found could be implemented.
 - 1. The dates these transactions occurred.
 - 2. The name of the funds and accounts that money was transferred from and to.

Findings of Fact

- 1. City Council received responses from 10 of the 12 employees and elected officials who received letters. Responses were not obtained from Ms. Kipp and Ms. Cieniewicz. The letters received are attached hereto. The majority of those responding claimed to have no knowledge or limited knowledge that the sewer fund transfers occurred. Mr. Geffken provided the most in depth response. Mr. Sleppy also provided useful information.
- 2. Managing Director Carl Geffken’s response was multi-part containing the following:
 - a. a memorandum from Mr. Geffken addressed to Council President Vaughn Spencer dated May 12, 2011, entitled “Sewer Investigation”
 - b. a memorandum from Mr. Geffken to Councilor Francis Acosta dated May 17, 2010 entitled “Sewer Loan”, which contains a 10 year history of General Fund Borrowings from the Sewer Fund along with outtakes from the annual external audits (2000-2009) reporting the transfers from the sewer fund,
 - c. a memorandum from Mr. Geffken to the Mayor and Council dated February 22, 2011 which responds to the questions listed in the Sewer Investigation Ordinance.
- 3. In his responses Mr. Geffken reported that:

- a. the sewer money was comingled with General Fund money and the money was then transferred into the City's payroll account or other appropriate payment account to cover City related expenses. (Geffken memo dated 2-22-11 #1)
 - b. the belief that the use of sewer funds to assist the City's operational needs was an accepted practice. He also noted the lack of financial controls or criteria to justify or restrict such transactions and agreed that Council should have been informed about these issues. (Geffken memo dated 2-22-11 #2 and 3)
 - c. prior to 2004 Council was informed about the transfers and the amount of transfer required to balance the annual budget sometimes in excess of \$3M.
 - d. by the last quarter of 2009 the Administration was aware that without the use of the sewer funds, the City would need to shut down operations and that repayment of these funds was impossible. He again stated that Council should have been informed about this situation (Geffken memo dated 2-22-11 #4)
 - e. in 2009 the City's revenues came in significantly under expenditures and a sewer loan of \$11.5M was required. (Geffken memo dated 5-17-2010 2nd paragraph and Geffken memo dated 2-22-11 # 8)
 - f. no internal or external organizations, entities or legal counsel were consulted prior to making the transfer. (Geffken memo dated 2-22-11 #6 and 9)
 - g. the sewer funds were only used to pay authorized City expenses due to the gap in General Fund revenues (Geffken memo dated 2-22-11 #10)
 - h. as the Administration viewed the transfers as "cash management" issues not related to appropriations, they believed Council did not need to be informed that the transfers were occurring. (Geffken memo dated 5-17-10 #1)
 - i. since the City entered Act 47 many improved financial controls, policy improvements and financial reporting to Council has been implemented. (Geffken memo dated 2-22-11 #14)
4. In his response letter, Mr. Sleppy reported that:
 - a. according to accounting records, the General Fund cash balance went negative sometime in 2007 and remained mostly negative until 2010. (Sleppy memo dated 5-6-11 # 1)
 - b. formerly the General Fund and Sewer Fund shared the same bank account and there was no physical transfer from one bank account to another. When the General Fund balance was drained sewer money was used to cover General Fund expenses. (Sleppy memo dated 5-6-11 # 2)
 5. In discussions, Council learned that due to lack of segregation of duties, the Accounting Manager had the sole ability to make transfers and/or "loan" transactions without the authorization of higher ranking officials.

6. Although the Administration reported that the issue with the sewer transfers was included in each external audit report, Council was never made aware that this issue was problematic or that the funds were not repaid.
7. The City Auditor did not find the sewer transfers to be problematic therefore did not try to correct the problem or make Council aware of the problem.
8. Lack of segregation of duties in the Accounting Department was cited over multiple years by the external auditor; however the issue was not corrected by the Administration or City Auditor

Conclusions

1. The Sewer Funds are no longer comingled with the General Fund. Sewer money is deposited into the Sewer Fund, which is account code #54 and a separate bank account.
2. The new financial policies, which include controls on transfers over \$500K, were enacted by City Council on April 11, 2011 (Bill No. 17-2011)
3. The Administration corrected the policy and procedure that allowed the Accounting Manager to make unauthorized transfers and/or loans. These transactions must now be approved by the City's Controller.
4. As required by the Act 47 Recovery Plan, the Administration now provides sound monthly financial reporting to the members of Council, which includes reporting on any transfers and/or loans. This information is reviewed monthly at the Council Finance Committee meeting.
5. The Administration makes monthly reports on the Sewer Fund to the Department of Justice.
6. Budget to Actual meetings now occur between various City Departments and the Director of Administrative Services.

RESOLUTION NO. _____

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS FOLLOWS:

That Elsayed Elmarzouky is appointed to the Police Civil Service Board with a term ending July 11, 2015.

Adopted by Council _____, 2011

Vaughn D. Spencer
President of Council

Attest:

Linda A. Kelleher
City Clerk

RESOLUTION NO. _____

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS FOLLOWS:

That James Reber is appointed to the Citizens Advisory Board as a Council District 3 appointment with a term ending December 31, 2014.

Adopted by Council _____, 2011

Vaughn D. Spencer
President of Council

Attest:

Linda A. Kelleher
City Clerk